SAN FRANCISCO PUBLIC LIBRARY
3 1223 02606 8222

The Treaties of 1785, 1799 and 1828

between the

United States and Prussia

Digitized by the Internet Archive
in 2026

https://archive.org/details/treatiesof1785170000jame_b2m8

Carnegie Endowment for International Peace
DIVISION OF INTERNATIONAL LAW

THE TREATIES OF 1785, 1799 AND 1828 BETWEEN THE UNITED STATES AND PRUSSIA

As Interpreted in Opinions of Attorneys General, Decisions of Courts, and Diplomatic Correspondence

EDITED BY
JAMES BROWN SCOTT
DIRECTOR

NEW YORK
OXFORD UNIVERSITY PRESS
AMERICAN BRANCH: 35 WEST 32ND STREET
LONDON, TORONTO, MELBOURNE, AND BOMBAY
1918

REF 341.2 C21

Carnegie Endowment for International Peace. The treaties of 1785, 1799 and 1828 between

---

COPYRIGHT 1918
BY THE
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
2 JACKSON PLACE
WASHINGTON, D. C.

341.2
C21

131982

PRESS OF BYRON S. ADAMS
WASHINGTON, D. C.

3 1223 02606 8222

Prefatory Note

On January 31, 1917, the German Government informed the United States that

> from February 1, 1917, all sea traffic will be stopped with every available weapon and without further notice in the following blockade zones [describing them in detail] around Great Britain, France, Italy and in the Eastern Mediterranean.

On the third day of February, the President of the United States addressed both Houses of Congress in joint session, and, after stating in detail the relations between Germany and the United States and the apparent intention on the part of the German Government to deprive the United States of the rights which neutrals possessed upon the high seas, he informed the Congress that he had

> directed the Secretary of State to announce to his Excellency the German Ambassador that all diplomatic relations between the United States and the German Empire are severed, and that the American Ambassador at Berlin will immediately be withdrawn; and, in accordance with this decision, to hand to his Excellency his passports.

The passports were accordingly handed to his Excellency the German Ambassador the same day, and diplomatic relations between the two countries were thus severed.

There are three treaties which in whole or in part in the opinion of the German Empire and of the United States affected their international relations. The treaties in question are: First, the treaty of amity and commerce concluded between Prussia and the United States of America on September 10, 1785; secondly, the treaty of amity and commerce concluded between Prussia and the United States of America on July 11, 1799; and, thirdly, the treaty of commerce and navigation concluded between Prussia and the United States of America on May 1, 1828.

These treaties have been held by the Governments of the contracting parties to apply not only to Prussia, but to the North German Confederation, of which Prussia was the leading member, and also to the

German Empire, of which the King of Prussia is the German Emperor. The opinions of the Attorneys General of the United States, the decisions of Federal Courts and the correspondence between the German Empire on the one hand and the United States on the other, relating to the nature and binding effect of the treaties, were collected from official sources and issued in pamphlet form in March, 1917.

War was then imminent and, as the conduct whereof the United States complained was not stopped, on April 2 the President advised the Congress to declare the existence of a state of war between the United States and the Imperial German Government, which the Congress did on April 6, 1917. The treaties, with the exception of Articles XXIII and XXIV of that of 1799, were, in so far as binding, suspended or abrogated by the outbreak of the war. They have, however, a distinct place in international law as well as in the relations of the two contracting countries. The pamphlet containing them is therefore reissued in revised and permanent form.

JAMES BROWN SCOTT,
Director of the Division of International Law.

WASHINGTON, D. C.,
March 1, 1918.

Contents

PAGE

TEXTS OF THE TREATIES:

Treaty of Amity and Commerce concluded September 10, 1785..... 3
Treaty of Amity and Commerce concluded July 11, 1799..... 26
Treaty of Commerce and Navigation concluded May 1, 1828..... 50

DECISIONS OF FEDERAL COURTS:

The Bark *Elwine Kreplin,* 4 Benedict, 413..... 67
The *Elwine Kreplin,* 9 Blatchford, 438..... 74
Ex Parte Newman, 14 Wallace, 152..... 82
United States v. Diekelman, 92 U. S. 520..... 93
North German Lloyd S. S. Co. v. Hedden, Collector, 43 Fed. Rep. 17.... 100
Terlinden v. Ames, 184 U. S. 270..... 109
Disconto Gesellschaft v. Umbreit, 208 U. S. 570..... 117
The Steamship *Appam,* 243 U. S. 124..... 124

OPINIONS OF ATTORNEYS GENERAL OF THE UNITED STATES:

Opinion of August 19, 1868, in the case of the Deserters from the Prussian Frigate *Niobe* 137
Opinion of September 19, 1885, on Tonnage Duty..... 141
Opinion of November 13, 1894, on the Duty on Imported Salt..... 142

PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES, AUGUST 22, 1870 (EXTRACT) 147

DIPLOMATIC CORRESPONDENCE:

Claims relative to tonnage dues:

The German Minister to the Secretary of State, August 3, 1885.... 151
The Secretary of State to the German Minister, November 7, 1885.. 152
The German Secretary of Legation to the Secretary of State, November 17, 1885..... 153
The German Minister to the Secretary of State, February 16, 1886.. 154
The Secretary of State to the German Minister, March 4, 1886.... 156
The German Minister to the Secretary of State, August 1, 1886.... 157

Case of the *William P. Frye:*

The Secretary of State to Ambassador Gerard, March 31, 1915.... 160
Ambassador Gerard to the Secretary of State, April 5, 1915..... 161
The Secretary of State to Ambassador Gerard, April 28, 1915..... 163
Ambassador Gerard to the Secretary of State, June 7, 1915..... 164
The Secretary of State to Ambassador Gerard, June 24, 1915..... 166
Ambassador Gerard to the Secretary of State, July 30, 1915..... 170
The Secretary of State to Ambassador Gerard, August 10, 1915.... 173
Ambassador Gerard to the Secretary of State, September 20, 1915.. 175
The Secretary of State to Ambassador Gerard, October 12, 1915.... 177
Ambassador Gerard to the Secretary of State, December 2, 1915.... 179

PAGE

Case of the *Appam:*
The German Ambassador to the Secretary of State, February 2, 1916 183
The Secretary of State to the British Ambassador, February 3, 1916 184
Memorandum from the British Embassy, February 4, 1916..... 184
Memorandum from the German Embassy, received February 8, 1916 186
Memorandum from the British Embassy, February 12, 1916..... 186
Memorandum from the British Embassy, February 15, 1916..... 187
The German Ambassador to the Secretary of State, February 22, 1916 187
The Secretary of State to the German Ambassador, March 2, 1916.. 189
The German Ambassador to the Secretary of State, March 14, 1916.. 192
The German Ambassador to the Secretary of State, March 16, 1916.. 193
The British Ambassador to the Secretary of State, March 31, 1916.. 196
The Secretary of State to the British Ambassador, April 4, 1916.... 197
The Secretary of State to the German Ambassador, April 7, 1916.... 198
Ambassador Gerard to the Secretary of State, May 22, 1916..... 200
Inclosure—Judgment of the German Prize Court, May 11, 1916. 200

Proposal of the German Government for an Addition to the Treaty of 1799:
The Minister of Switzerland to the Secretary of State, February 10, 1917 202
The Secretary of State to the Minister of Switzerland, March 20, 1917 204

Texts of the Treaties

Text of the Treaty of 1785[1]

A Treaty of Amity and Commerce

Between his Majesty the King of Prussia and the United States of America.

His Majesty the King of Prussia and the United States of America, desiring to fix, in a permanent and equitable manner, the rules to be observed in the intercourse and commerce they desire to establish between their respective countries, His Majesty and the United States have judged that the said end can not be better obtained than by taking the most perfect equality and reciprocity for the basis of their agreement.

With this view, His Majesty the King of Prussia has nominated and constituted as his Plenipotentiary, the Baron Frederick William de Thulemeier, his Privy Counsellor of Embassy, and En-

Traité d'Amitié et de Commerce

Entre sa Majesté le Roi de Prusse et les États-Unis de l'Amérique.

Sa Majescté le Roi de Prusse &c. &c., et les Etats Unis de l'Amerique désirant de fixer d'une manière permanente et équitable les regles qui doivent être observées relativement à la correspondance et au commerce à établir entre les États respectifs des deux parties, sa Majesté et les Etats Unis ont cru ne pouvoir mieux remplir ce but, qu'en posant pour base de leurs engagemens la plus parfaite égalité et reciprocité.

Dans cette vue Sa Majesté le roi de Prusse a nommé et constitué pour son Plenipotentiaire le Baron Frédéric Guillaume de Thulemeier son Conseiller privé d'Ambassade et Envoyé extraor-

[1] Concluded September 10, 1785; ratified by the Congress May 17, 1786; ratifications exchanged October, 1786. This treaty, as well as those of 1799 and 1828, has been compared with the English and French texts of the official originals on file in the Department of State, which source therefore is the authority for the accuracy of the text in each case. It may also be found in *U. S. Statutes at Large*, vol. 8, p. 84, and vol. 18, pt. 2, p. 641; and in Malloy's *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and other Powers, 1776–1909* (Washington, 1910), p. 1477.

This treaty expired by its own limitations October, 1796, but Article 12 was revived by Article 12 of the treaty of 1828. See *post*, p. 59.

voy Extraordinary with their High Mightinesses the States General of the United Netherlands; and the United States have on their part given full powers to John Adams, Esquire, late one of their Ministers Plenipotentiary for negotiating a peace, heretofore a Delegate in Congress from the State of Massachusetts, and Chief Justice of the same, and now Minister Plenipotentiary of the United States with His Britannic Majesty; Doctor Benjamin Franklin, late Minister Plenipotentiary at the Court of Versailles, and another of their Ministers Plenipotentiary for negotiating a peace; and Thomas Jefferson, heretofore a Delegate in Congress from the State of Virginia, and Governor of the said State, and now Minister Plenipotentiary of the United States at the Court of His Most Christian Majesty; which respective Plenipotentiaries, after having exchanged their full powers, and on mature deliberation, have concluded, settled, and signed the following articles:

dinaire auprès de L. H. P. les États Généraux des Provinces-Unies; Et les Etats-Unis ont de leur côté pourvu de leurs Pleinpouvoirs le Sieur John Adams ci-devant l'un de leurs Ministres Plenipotentiaires pour traiter de la paix, Délegué au Congrès de la part de l'Etat de Massachusetts et chef de Justice du dit État, actuellement Ministre Plenipotentiaire des États Unis près sa Majesté le Roi de la Grande Britagne, le Docteur Benjamin Franklin en dernier lieu leur Ministre Plénipotentiare à la Cour de S. M. T. C. et aussi l'un de leurs Ministres Plenipotentiaires pour traiter de la paix; Et le Sieur Thomas Jefferson, ci-devant délegué au Congrès de la part de l'Etat de Virginie et gouverneur du dit Etat, actuellement Ministre Plénipotentiaire à la cour de S. M. T. C. lesquels Plénipotentiaires respectifs, après avoir échangé leurs pleinpouvoirs, et en consequence d'une mure déliberation, ont conclu, arrêté et signé les articles suivans:

Article 1

There shall be a firm, inviolable, and universal peace and sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America and their citizens on the

Article 1

Il y aura une Paix ferme inviolable et universelle et une amitié sincère, entra Sa Majesté le Roi de Prusse, ses heritiers, Successeurs et Sujets, d'une part, et les États-Unis d'Amérique et leurs Citoyens, d'autre part, sans

other, without exception of persons or places.

ARTICLE 2

The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay within the said United States no other or greater duties, charges, or fees whatsoever, than the most favoured nations are or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; submitting themselves nevertheless to the laws and usages there established, and to which are submitted the citizens of the United States, and the citizens and subjects of the most favoured nations.

ARTICLE 3

In like manner the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay in the dominions of his said Majesty no other or greater duties, charges, or fees whatso-

excéption de personnes ou de lieux.

ARTICLE 2

Les Sujets de Sa Majesté le Roi de Prusse pourront fréquenter toutes les côtes et tous les pays des États-Unis de l'Amérique, y résider et trafiquer en toutes sortes de Productions, manufactures et Marchandises, et ne payeront d'autres ni de plus forts impôts, Charges ou droits dans les dits États-Unis, que ceux que les Nations les plus favorisées sont ou seront obligées de payer; et ils jouiront de tous les droits, privilèges et éxemptions dans la Navigation et le commerce, dont jouit ou jouira la Nation la plus favorisée; se soumettant néanmoins aux Loix et Usages y établis, et aux quels sont soumis les Citoyens des Etats Unis et les citoyens et Sujets des nations les plus favorisées.

ARTICLE 3

Pareillement les Citoyens des Etats Unis de l'Amérique pourront fréquenter toutes les côtes et tous les Pays de sa Majesté le Roi de Prusse, y resider et trafiquer en toutes sortes de Productions Manufactures et Marchandises et ne payeront d'autres ni plus forts impots, charges ou droits dans les Domaines de sa dite Majesté, que

ever than the most favoured nation is or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; submitting themselves nevertheless to the laws and usages there established, and to which are submitted the subjects of His Majesty the King of Prussia, and the subjects and citizens of the most favoured nations.

ceux que la Nation la plus favorisée est ou sera obligée de payer; et ils jouiront des tous les droits privilèges et exemptions dans la navigation et le commerce, dont jouit ou jouira la nation la plus favorisée; se soumettant néanmoins aux Loix et Usages y établis, et aux quels sont soumis les Sujets de Sa Majesté le Roi de Prusse; et les Sujets et Citoyens des nations les plus favorisées.

ARTICLE 4

More especially each party shall have a right to carry their own produce, manufactures, and merchandize in their own or any other vessels to any parts of the dominions of the other, where it shall be lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only as are or shall be paid by the most favoured nation. Nevertheless, the King of Prussia and the United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandize to the vessels of the country of which it is the growth or manufacture, to establish

ARTICLE 4

En particulier, chacune des deux Nations aura le droit d'im porter ses propres productions, manufactures et Marchandises, à bord de ses proprès bâtiments ou de tel autre, dans toutes les parties des Domaines de l'autre où il sera permis à tous les Sujets et Citoyens de l'autre nation de les acheter librement; comme aussi d'y charger les productions, manufactures et marchandises de l'autre que tous les dits Sujets ou Citoyens auront la liberté de leur vendre; en payant dans l'un et l'autre cas tels impots, droits et charges seulement, que ceux qui sont ou seront payés par la nation la plus favorisée. Cependant le Roi de Prusse et les Etats Unis de l'Amérique, et chacun d'eux en particulier, se reservent le droit, au cas que quelque nation restreigne le transport des marchan-

against such nations restaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandize whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties shall not import nor export the merchandize prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

dises aux vaisseaux des pays dont elles sont la production ou la manufacture, d'établir envers cette nation des règlemens reciproques. Se reservant de plus le Droit de prohiber dans leurs pays respectifs l'importation ou l'exportation de toute marchandise quelconque, dès que la raison d'Etat l'exige. En ce cas, les Sujets ou Citoyens d'une des Parties contractantes ne pourront importer ni exporter les marchandises prohibées par l'autre. Mais si l'une des parties contractantes permet à quelqu'autre Nation d'importer ou d'exporter ces mêmes marchandises, les Citoyens ou Sujets de l'autre partie contractante jouiront tout aussitôt d'une liberté pareille.

ARTICLE 5

The merchants, commanders of vessels, or other subjects or citizens of either party, shall not within the ports or jurisdiction of the other be forced to unload any sort of merchandize into any other vessels, nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE 5

Les Marchands, Commandans de vaisseaux, et autres Sujets ou Citoyens de chacune des deaux Nations, ne seront pas forcés dans les ports ou dans la jurisdiction de l'autre, de décharger aucune sorte de Marchandises dans d'autres vaisseaux, ni de les recevoir à bord de leurs propres navires, ni d'attendre leur chargement plus long-temps qu'il ne leur plaira.

ARTICLE 6

That the vessels of either party loading within the ports or jurisdiction of the other may not be

ARTICLE 6

Pour eviter que les vaisseaux de l'une des deux parties contractantes ne soyent point inutilement

uselessly harassed or detained, it is agreed that all examinations of goods required by the laws shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is; but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

molestés ou detenus dans les Ports ou sous la Jurisdiction de l'autre, il a été convenu que la visite des marchandises, ordonnée par les loix, se fera avant qu'elles ne soyent chargées sur le navire, et qu'ensuite elles ne seront plus assujetties à aucune visite. Et en général il ne se fera point de recherche à bord du vaisseau, à moins qu'on n'y ait chargé clandestinement et illégalement des marchandises prohibées. Dans ce cas, celui par l'ordre duquel elles ont été porté à bord, ou celui qui les y a portées sans ordre, sera soumis aux loix du pays où il se trouve, sans que le reste de l'équipage soit molesté, ni les autres marchandises, ou le vaisseau saisis ou detenus par cette raison.

ARTICLE 7

Each party shall endeavour, by all the means in their power, to protect and *desend* [defend] all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction, by sea or by land; and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects which shall be taken from them within the extent of their said jurisdiction.

ARTICLE 7

Chacune des deux parties contractantes tâchera, par tous les moyens qui seront en son pouvoir, de protéger et de défendre tous les vaisseaux et autres effets appartenants aux Citoyens ou Sujets de l'autre, et se trouvant dans l'étendue de sa Jurisdiction par mer ou par terre: et elle employera tous ses efforts pour recouvrer et faire restituer aux Propriétaires légitimes les vaisseaux et effets qui leur auront été enlevés dans l'étendue de sa dite Jurisdiction.

ARTICLE 8

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage without molestation, and without being obliged to render account of their cargo, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments for the safety and convenience of navigators, which duties, charges, and fees shall be the same, and shall be paid on the same footing as in the case of subjects or citizens of the country where they are established.

ARTICLE 8

Les vaisseaux des Sujets ou citoyens d'une des deux parties contractantes, arrivant sur une côte appartenante à l'autre, mais n'ayant pas dessein d'entrer au prot, ou, y étant entrés ne desirant pas de decharger leurs Cargaisons, ou de rompre leur charge, auront la liberté de repartir et de poursuivre leur route sans empêchement, et sans être obligés de rendre compte de leur cargaison, ni de payer aucuns impôts, charges et droits quelconques, excepté ceux établis sur les vaisseaux une fois entrés dans le port, et destinés à l'entretien du port même ou à d'autres établissemens qui ont pour but la sûreté et la commodité des navigateurs; lesquels droits, charges et impôts seront les mêmes et se payeront sur le même pied qu'ils sont acquittés par les Sujets ou Citoyens de l'état où ils sont établis.

ARTICLE 9

When any vessel of either party shall be wrecked, foundered, or otherwise damaged on the coasts, or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage

ARTICLE 9

Au cas que quelque vaisseau appartenant à l'une des deux Parties contractantes auroit fait naufrage, échoué ou souffert quelque autre Dommage sur les côtes ou sous la domination de l'autre, les Sujets ou Citoyens respectifs recevront, tant pour eux que pour leurs vaisseaux et effets, la même assistance qui auroit été fournie

happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of their cargo be unladed, they shall pay no duties, charges, or fees on the part which they shall relade and carry away. The antient and barbarous right to wrecks of the sea shall be entirely abolished, with respect to the subjects and citizens of the two contracting parties.

aux habitans du Pays où l'accident arrive; et ils payeront seulement les mêmes charges et droits, auxquels les dits habitants auroient été assujettis en pareil cas. Et si la réparation du vaisseau exigeoit que la cargaison fût dechargée en tout ou en partie, ils ne payeront aucun impôt, charge ou droit de ce qui sera rembarqué et emporté. L'ancien et barbare droit de naufrage sera entièrement aboli à l'égard des Sujets ou Citoyens des deux Parties contractantes.

ARTICLE 10

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods, and for so long a time as would be taken of the goods of

ARTICLE 10

Les Citoyens ou Sujets de l'une des deux parties contractantes auront dans les États de l'autre, la Liberté de disposer de leurs biens personnels, soit par testament, donation ou autrement, et leurs héritiers étant Sujets ou Citoyens de l'autre partie contractante, succederont à leurs biens, soit en vertu d'un Testament, ou *ab intestat,* et ils pourront en prendre possession, soit en personne, soit par d'autres agissant en leur place, et en disposeront à leur volonté, en ne payant d'autres droits que ceux auxquels les habitants du pays où la succession est devenue vacante, sont assujettis en pareille occurrence. Et en cas d'absence des Héritiers, on prendra aussi longtemps des biens qui leur

a native in like case, until the lawful owner may take measures for receiving them. And if question shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would by the laws of the land descend on a citizen*s* or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proce[e]ds without molestation, and exempt from all rights of detraction on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published or hereafter to be published, by His Majesty the King of Prussia, to prevent the emigration of his subjects.

sont échus, les mêmes soins qu'on auroit pris en pareille occasion des biens des natifs du Pays, jusqu'à ce que le Proprietaire légitime ait agrée des arrangemens pour recuillir l'heritage. S'il s'éleve des contestations entre différens pretendans ayant droit à la Succession, elles seront decidées en dernier ressort selon les loix et par les Judges du Pays où la Succession est vacante. Et si par la mort de quelque personne possédant des biens-fonds sur le territoire de l'une des parties contractantes, ces biens-fonds venoient a passer, selon les loix du Pays, à un citoyen ou sujet de l'autre Partie, celui-ci, si par sa qualité d'étranger, il est inhabile de les posseder, obtiendra un delai convenable pour les vendre et pour en retirer le provenu, sans obstacle, exempt de tout droit de retenue, de la part du gouvernement des Etats respectifs. Mais cet article ne derogera en aucune manière à la force des Loix qui ont dejà été publiées ou qui le seront dans la suite par sa Majesté le Roi de Prusse, pour prevenir l'emigration de ses sujets.

Article 11

The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdic-

Article 11

Il sera accordé la plus parfaite liberté de conscience et de culte aux citoyens et sujets de chaque partie contractante dans les États

tion of the other, without being liable to molestation in that respect for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying-grounds or other decent and suitable places, and shall be protected from violation or disturbance.

de l'autre, et personne ne sera molesté à cet égard pour quelque cause que ce soit, si ce n'est pour insulte faite à la Religion de l'autre. De plus, si des sujets et citoyens de l'une des parties contractantes venoient à mourir dans la Jurisdiction de l'autre, leurs corps seront enterrés dans les endroits où l'on a coutume de faire les enterremens, ou dans tel autre lieu decent et convenable, et ils seront protegés contre toute violence et trouble.

ARTICLE 12

If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; and the same freedom shall be extended to persons who shall be on board a free vessel, although they should be enemies to the other

ARTICLE 12

Si l'une des Parties contractantes étoit en guerre avec une autre Puissance, la libre correspondence et le Commerce des citoyens ou sujets de la partie qui demeure neutre envers les puissances belligerantes, ne seront point interrompus. Au contraire, et dans ce cas comme en pleine paix, les vaisseaux de la Partie neutre pourront naviger en toute sûreté dans les Ports et sur les côtes des Puissances belligérantes; les vaisseaux libres rendant les marchandises libres, en tant qu'on regardera comme libre tout ce qui sera à bord d'un navire appartenant à la partie neutre, quand même ces effets appartiendroient à l'ennemi de l'autre. La même liberté s'étendra aux Personnes qui se trouveront à bord d'un vaisseau

party, unless they be soldiers in actual service of such enemy.

ARTICLE 13

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandize heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors: And it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current

libre, quand mêmes elles seroient ennemis de l'autre Partie, excepté que ce fussent des gens de guerre, actuellement au service de l'ennemi.

ARTICLE 13

Dans le cas où l'une des Parties contractantes se trouveroit en guerre avec une autre Puissance, il a été convenu que pour prevenir les difficultés et les discussions qui surviennent ordinairement par rapport aux Marchandises ci-devant appellées de contrebande, telles que armes, munitions, et autres provisions de guerre de toute espèce, aucun de ces articles, chargés à bord des vaisseaux des Citoyens ou Sujets de l'une des parties, et destinés pour l'ennemi de l'autre, ne sera censé de contrebande, au point d'impliquer confiscation ou condamnation, et d'entrainer la perte de la proprieté des individus. Néanmoins il sera permis d'arrêter ces sortes de vaisseaux et effets, et de les retenir pendant tout le temps que le preneur croira nécessaire pour prévenir les inconveniens et le Dommage qui pourroient en resulter autrement; mais dans ce cas on accordera une compensation raisonable pour les pertes qui auront été occasionnées par la saisie. Et il sera permis en outre aux Preneurs d'employer à leur service, en tout ou en partie, les

price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

munitions militaires detenues, en en payant aux Propriètaires la pleine valeur, à determiner sur le prix qui aura cours à l'endroit de leur destination; mais que dans le cas énoncé, d'un vaisseau arrêté pour des articles ci-devant appellés contrebande, si le maitre du navire consentoit à delivrer les marchandises suspectes, il aura la Liberté de le faire, et le navire ne sera plus amené dans le port, ni détenu plus long-temps, mais aura toute Liberté de poursuivre sa route.

ARTICLE 14

And in the same case where one of the parties is engaged in war with another Power, that the vessels of the neutral party may be readily and certainly known, it is agreed that they shall be provided with sea-letters or passports, which shall express the name, the property, and burthen of the vessel, as also the name and dwelling of the master; which passports shall be made out in good and due forms (to be settled by conventions between the parties whenever occasion shall require,) shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the said vessel be under convoy of one or more vessels of war belonging to the neutral party, the simple declaration of the officer

ARTICLE 14

Dans le cas où l'une des deux parties contractantes se trouveroit engagée dans une guerre avec une autre Puissance, et afin que les vaisseaux de la partie neutre soyent promptement et sûrement reconnus, on est convenu qu'ils devront être munis de lettres de mer ou Passeports, exprimant le nom le propriétaire, et le port du navire, ainsi que le nom et la demeure du maitre. Ces Passeports, qui seront expediés en bonne et due forme (à déterminer par des conventions entre les Parties, lorsque l'occasion le requerra) devront être renouvellés toutes les fois que le vaisseau retournera dans son port, et seront exhibés à chaque requisition tant en pleine mer que dans le port. Mais si le navire se trouve sous le convoi d'un ou plusieurs vaisseaux de

commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

guerre appartenants à la partie neutre, il suffira que l'officier commandant du convoi déclare que le navire est de son parti moyennant quoi cette simple déclaration sera censée établir le fait, et dispensera les deux parties de toute visite ultérieure.

ARTICLE 15

And to prevent entirely all disorder and violence in such cases, it is stipulated, that when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, public or private, of the other party, such vessel of war shall not approach within cannon-shot of the said neutral vessel, nor send more than two or three men in their boat on board the same, to examine her sea-letters or passports. And all persons belonging to any vessel of war, public or private, who shall molest or injure in any manner whatever the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE 15

Pour prevenir entièrement tout desordre et toute violence en pareil cas, il a été stipulé que lors que des navires de la Partie neutre, navigeans sans convoi, recontreront quelque vaisseau de guerre public ou particulier de l'autre partie, le vaisseau de guerre n'approchera le navire neutre qu'au delà de la portée du canon, et n'enverra pas plus de deux ou trois hommes dans sa chaloupe à bord, pour examiner les Lettres de Mer ou Passeports. Et toutes les personnes appartenantes à quelque vaisseau de guerre public ou particulier, qui molesteront ou insulteront en quelque manière que ce soit l'équipage, les vaisseaux ou effets de l'autre Partie, seront responsables en leurs personnes et en leurs biens, de tous dommages et intérêts; pour lesquels il sera donné caution suffisante par tous les commandans de vaisseaux armés en course, avant qu'ils reçoivent leurs commissions.

ARTICLE 16

It is agreed that the subjects or citizens of each of the contracting parties, their vessels and effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition, or other public or private purpose whatsoever. And in all cases of seizure, detention, or arrests for debts contracted or offences committed by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE 16

Il a été convenu que les Sujets ou Citoyens de l'une des parties contractantes, leurs vaisseaux ni effets, ne pourront être assujettis à aucun embargo, ni retenus de la part de l'autre pour quelque expédition militaire, usage public ou particulier de qui que ce soit. Et dans les cas de saisie, de detention, ou d'arrêt, soit pour dettes contractées, ou offenses commises par quelque citoyen ou sujet de l'une des parties contractantes dans la Jurisdiction de l'autre, on procedera uniquement par ordre et autorité de la Justice et suivant les voyes ordinaires en pareil cas usitées.

ARTICLE 17

If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by that other, they shall be brought into some port of one of the parties, and delivered into the custody of the officers of that port, in order to be restored entire to the true proprietor, as soon as due proof shall be made concerning the property thereof.

ARTICLE 17

S'il arrivoit que les Bâtimens ou effets de la puissance neutre fussent pris par l'ennemi de l'autre, ou par un Pirate, et ensuite repris par la Puissance en guerre, ils seront conduits dans un Port de l'une des deux Parties contractantes et remis à la garde des officiers du Port, afin d'être restitués en entier au proprietaire legitime, dès qu'il aura duement constaté son droit de propriété.

ARTICLE 18

If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accident, shall take refuge with

ARTICLE 18

Lorsque les Citoyens ou Sujets de l'une des deux parties contractantes seront forcés par des tempêtes, par la poursuite des cor-

their vessels or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with all refreshments, provisions, and other things necessary for their sustenance, hea[l]th, and accommodation, and for the repair of their vessels.

ARTICLE 19

The vessels of war, public and private, of both parties, shall carry freely wheresoever they please the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to shew. But no vessel which shall have made prizes on the subjects of His Most Christian Majesty the King of France shall have a right of asylum in the ports or havens of the said United States; and if any such be forced therein by tempest or dangers of

saires ou vaisseaux ennemis, ou par quelqu' autre accident, à se refugier avec leurs vaisseaux ou effets dans les havres, ou dans la Jurisdiction de l'autre, ils seront reçus, protégés et traités avec humanité et honnêteté. Il leur sera permis de se pourvoir à un prix raisonable de rafraichissemens, de provisions et de toutes choses nécessaires pour leur subsistance, santé et commodité, et pour la reparation de leurs vaisseaux.

ARTICLE 19

Les vaisseaux de Guerre publics et particuliers des deux parties contractantes, pourront conduire en toute Liberté, par tout où il leur plaira, les vaisseaux et effets qu'ils auront pris sur leurs ennemis, sans être obligés de payer aucuns impôts, charges ou droits aux officiers de l'amirauté, des douanes ou autres. Ces prises ne pourront être non plus ni arrêtées, ni visitées, ni soumises à des procédures légales, en entrant dans le port de l'autre partie, mais elles pourront en sortir librement, et être conduites en tout temps par le vaisseau preneur aux endroits portés par les commissions, dont l'officier commandant le dit vaisseau sera obligé de faire montre. Mais tout vaisseau qui aura fait des prises sur les sujets de S. M. T. C. le Roi de France, ne sauroit obtenir un droit d'asile dans les

the sea, they shall be obliged to depart as soon as possible, according to the tenor of the treaties existing between his said Most Christian Majesty and the said United States.

ARTICLE 20

No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war any commission or letter of marque for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate; nor shall either party hire, lend, or give any part of their naval or military force to the enemy of the other, to aid them offensively or defensively against that other.

ARTICLE 21

If the two contracting parties should be engaged in war against a common enemy, the following points shall be observed between them:

1. If a vessel of one of the parties retaken by a privateer of the other shall not have been in possession of the enemy more than twenty-four hours, she shall be restored to the first owner for one-third of the value of the vessel and cargo; but if she shall have been

ports ou havres des États Unis; et s'il étoit forcé d'y entrer par des tempêtes ou dangers de mer, il sera obligé d'en repartir le plutôt possible, conformement à la teneur des traités subsistants entre S. M. T. C. et les Etats Unis.

ARTICLE 20

Aucun Citoyen ou sujet de l'une des deux Parties contractantes n'acceptera d'une Puissance avec laquelle l'autre pourroit être en guerre, ni commission, ni lettre de marque, pour armer en course contre cette dernière, sous peine d'être puni comme pirate. Et ni l'un ni l'autre des deux Etats ne louera, prêtera ou donnera une partie de ses forces navales ou militaires à l'ennemi de l'autre, pour l'aider à agir offensivement ou défensivement contre l'état qui est en guerre.

ARTICLE 21

S'il arrivoit que les deux parties contractantes fussent en même temps en guerre contre un ennemi commun, on observera de part et d'autre les points suivants.

1.° Si les Bâtimens de l'une des deux nations repris par les armateurs de l'autre, n'ont pas été au pouvoir de l'ennemi au de la de 24 heures, ils seront restitués au premier proprietaire moyennant le payement du tiers de la valeur du Bâtiment et de la Cargaison.

more than twenty-four hours in possession of the enemy, she shall belong wholly to the recaptor.

2. If in the same case the recapture were by a public vessel of war of the one party, restitution shall be made to the owner for one-thirtieth part of the value of the vessel and cargo, if she shall not have been in possession of the enemy more than twenty-four hours, and one-tenth of the said value where she shall have been longer; which sums shall be distributed in gratuities to the recaptors.

3. The restitution in the cases aforesaid shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

4. The vessels of war, public and private, of the two parties, shall be reciprocally admitted with their prizes into the respective ports of each; but the said prizes shall not be discharged nor sold there, until their legality shall have been decided, according to the laws and regulations of the States to which the captor belongs, but by the judicatures of the place into which the prize shall have been conducted.

5. It shall be free to each party to make such regulations as they shall judge necessary for the conduct of their respective vessels of war, public and private, relative to

si au contraire le vaisseau repris a été plus de 24 heures au pouvoir de l'ennemi, il appartiendra en entier à celui qui l'a repris. 2.° Dans le cas qu'un navire est repris par un vaisseau de guerre de l'une des puissances contractantes, il sera rendu au proprietaire, moyennant qu'il paye un trentieme du navire et de la cargaison, si le batiment n'a pas été plus de 24 heures au pouvoir de l'ennemi, et le dixieme de cette valeur, s'il y a été plus long-temps, lesquelles sommes seront distribuées en guise de gratification à ceux qui l'auront repris. 3.° Dans ces cas la restitution n'aura lieu qu'après les preuves faites de la propriété, sous caution de la quote-part qui en revient à celui qui a repris le navire. 4°. Les vaisseaux de guerre publics et particuliers des deux Parties contractantes seront admis réciproquement avec leurs prises dans les ports respectifs; cependant ces prises ne pourront y être dechargées ni vendues. qu'après que la légitimité de la prise aura été décidée suivant les loix et réglemens de l'état dont le préneur est sujet, mais par la Justice du lieu où la prise aura été conduite. 5.° Il sera libre à chacune des parties contractantes de faire tels réglemens qu'elles jugeront nécessaires, relativement à la conduite que devront tenir respectivement leurs vaisseaux de guerre publics

the vessels which they shall take and carry into the ports of the two parties.

ARTICLE 22

Where the parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall upon all occasions take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE 23

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance. And all women and children, scholars of every faculty, cultivators of the earth, artizans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to con-

et particuliers, à l'égard des Bâtiments qu'ils auront pris et amenés dans les ports des deux Puissances.

ARTICLE 22

Lorsque les parties contractantes seront engagées en guerre contre un ennemi commun, ou qu'elles seront neutres toutes deux, les vaisseaux de guerre de l'une, prendront, en toute occasion sous leur protection, les navires de l'autre, qui font avec eux la même route, et ils les defendront, aussi longtemps qu'ils feront voile ensemble, contre toute force et violence et de la même maniere qu'ils protegeroient et défendroient les navires de leur propre nation.

ARTICLE 23

S'il survient une guerre entre les parties contractantes, les marchands de l'un des deux Etats qui resideront dans l'autre, auront la permission d'y rester encore neuf mois, pour recueillir leurs dettes actives, et arranger leurs affaires; après quoi ils pourront partir en toute liberté et emporter tous leurs biens, sans être molestés ni empêchés. Les femmes et les enfans, les gens de lettres de toutes les facultés, les cultivateurs, artisans, manufacturiers et Pècheurs, qui ne sont point armés et qui habitent des villes, villages ou places qui ne sont pas fortifiés, et en général tous ceux dont la voca-

tinue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting Powers shall grant or issue any commissions to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce.

tion tend à la subsistance et à l'avantage commun du genre humain, auront la liberté de continuer leurs professions respectives, et ne seront point molestés en leurs personnes, ni leurs maisons, ou leurs biens incendiés, ou autrement detruits, ni leurs champs ravagés par les armées de l'ennemi au pouvoir duquel ils pourroient tomber par les évenemens de la guerre; mais si l'on se trouve dans la necessité de prendre quelque chose de leurs propriétés pour l'usage de l'armée ennemie, la valeur en sera payée à un prix raisonnable. Tous les vaisseaux marchands et commerçans, employés à l'échange des productions de differens endroits, et par consequent destinés a faciliter et repandre les nécessités, les commodités et les douceurs de la vie, passeront librement et sans être molestés. Et les deux Puissances contractantes s'engagent à n'accorder aucune commission à des vaisseaux armés en course, qui les autorisât à prendre ou à detruire ces sortes de vaisseaux marchands, ou à interrompre le commerce.

Article 24

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crouding them into close and noxious places, the two contracting parties solemnly

Article 24

Afin d'adoucir le sort de prisonniers de guerre, et ne les point exposer à être envoyés dans des climats éloignés et rigoureux, ou resserrés dans des habitations étroites et malsaines, les deux Par-

pledge themselves to each other and to the world that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies, or any other parts of Asia or Africa, but that they shall be placed in some part of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at

ties contractantes s'engagent solemnellement l'une envers l'autre, et à la face de l'univers, qu'elles n'adopteront aucun de ces usages; que les prisonniers qu'elles pourroient faire l'une sur l'autre ne seront transportés ni aux Indes Orientales, ni dans aucune contrée de l'Asie ou de l'Afrique, mais qu'on leur assignera en Europe ou en Amérique, dans les territoirs respectifs des Parties contractantes, un séjour situé dans un air sain; qu'ils ne seront point confinés dans des cachots, ni dans des prisons, ni dans des vaisseaux de prison; qu'ils ne seront pas mis au fers, ni garotés, ni autrement privés de l'usage de leurs membres; que les officiers seront relâché sur leur parole d'honneur dans l'enceinte de certains districts qui leur seront fixés, et qu'on leur accordera des logemens commodes; que les simples soldats seront distribués dans des cantonnemens ouverts, assez vastes pour prendre l'air et l'exercice, et qu'ils seront logés dans des barraques aussi spacieuses et aussi commodes que le sont celles des troupes de la Puissance au pouvoir de laquelle se trouvent les Prisonniers. Que cette Puissance fera pourvoir journellement les officiers d'autant de rations, composées des mêmes articles et de la même qualité, dont jouissent en nature ou en équivalent, les officiers du même rang

the close of the war; and the said accounts shall not be mingled with or set off against any others, nor the ballances due on them be withheld as a satisfaction or reprisal for any other article or for any other cause, real or pretended, whatever; that each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall breack his parole, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most ac-

qui sont à son propre service; qu'elle fournira également à tous les autres prisonniers une ration pareille à celle qui est accordée au soldat de sa propre armée. Le montant de ces depenses sera payé par l'autre Puissance, d'après une liquidation de compte à arrêter reciproquement pour l'entretien des prisonniers à la fin de la guerre; et ces comptes ne seront point confondus ou balancés avec d'autres comptes, ni la solde qui en est due, retenue comme compensation ou represailles, pour tel autre article ou telle autre prétention réelle ou supposée. Il sera permis à chacune des deux Puissances d'entretenir un Commissaire de leur choix, dans chaque cantonnement des prisonniers qui sont au pouvoir de l'autre; ces commissaires auront la liberté de visiter les prisonniers, aussi souvent qu'ils le desireront; ils pourront également recevoir et distribuer les douceurs que les parens ou amis des prisonniers leur feront parvenir; enfin il leur sera libre encore de faire leurs rapports par lettres ouvertes, à ceux qui les employent; mais si un officier manquoit à sa parole d'honneur, ou qu'un autre prisonnier sortit des limites qui auront été fixées à son cantonnement, un tel officier ou un autre prisonnier sera frustré individuellement des avantages stipulés dans cet article, pour sa relaxation

knowledged articles in the law of nature or nations.

ARTICLE 25

The two contracting parties grant to each other the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, whose functions shall be regulated by particular agreement whenever either party shall chuse to make such appointment; but if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ARTICLE 26

If either party shall hereafter grant to any other nation, any particular favour in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted

sur parole d'honneur ou pour son cantonnement. Les deux Puissances contractantes ont declaré en outre, que, ni le prétexte que la guerre rompt les traités, ni tel autre motif quelconque, ne seront cencés annuller ou suspendre cet article et le précédent; mais qu'au contraire le temps de la guerre est précisément celui pour lequel ils ont été stipulés, et durant lequel ils seront observés aussi saintement que les articles les plus universellement reconnus par le droit de la nature et des gens.

ARTICLE 25

Les deux Parties contractantes se sont accordé mutuellement la faculté de tenir dans leurs ports respectifs, des consuls, vice-consuls, agens et commissaires de leur choix et dont les fonctions seront determinées par un arrangement particulier, lorsque l'une des deux Puissances aura nommé à ces postes. Mais dans le cas que tel, ou autre de ces consuls veuille faire le commerce, il sera soumis aux mêmes loix et usages, auxquels sont soumis les particuliers de sa nation à l'endroit où il réside.

ARTICLE 26

Lorsque l'une des deux parties contractantes accordera dans la suite quelque faveur particuliére en fait de navigation ou de commerce à d'autres nations, elle deviendra aussitôt commune à l'au-

to such other nation, or on yielding the compensation, where such nation does the same.

ARTICLE 27

His Majesty the King of Prussia and the United States of America agree that this treaty shall be in force during the term of ten years from the exchange of ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war, shall continue in force until the conclusion of the treaty which shall reestablish peace; and that this treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature.

In testimony whereof the Plenipotentiaries before mentioned, have hereto subscribed their names and affixed their seals, at the places of their respective residence, and at the dates expressed under their several signatures.

B. FRANKLIN. [L. S.]
Passy, July 9, 1785.
TH. JEFFERSON. [L. S.]
Paris, July 28, 1785.
JOHN ADAMS. [L. S.]
London, August 5, 1785.
F. G. DE THULEMEIER. [L. S.]
A la Haye le 10 Septembre, 1785.

tre partie contractante, et celle-ci jouira de cette faveur, gratuitement, si la concession est gratuite, ou en accordant la même compensation si la concession est conditionelle.

ARTICLE 27

Sa Majesté le Roi de Prusse et les Etats-Unis de l'Amérique sont convenus que le présent traité aura son plein effet pendant l'espace de dix ans, â compter de jour de l'échange des Ratifications, et que si l'expiration de ce terme arrivoit dans le cours d'une guerre entre eux, les articles ci-dessus stipulés pour regler leur conduite en temps de guerre, conserveront toute leur force, jusqu'à la conclusion du traité qui retablira la paix.

Le présent traité sera ratifié de part et d'autre, et les ratifications seront échangées dans l'espace d'une année, à compter du jour de la signature.

En foi de quoi les Plenipotentiaires sus nommés ont signé le présent Traité et y ont apposé le Cachet de leurs armes, aux lieux de leur domicile respectif, ainsi qu'il sera exprimé ci-dessous.

Text of the Treaty of 1799[1]

TREATY OF AMITY AND COMMERCE

Between his Majesty the King of Prussia and the United States of America.

His Majesty the King of Prussia and the United States of America, desiring to maintain upon a stable and permanent footing the connections of good understanding which have hitherto so happily subsisted between their respective States, and for this purpose to renew the treaty of amity and commerce concluded between the two Powers at the Hague the 10th of September, 1785, for the term of ten years, His Prussian Majesty has nominated and constituted as his Plenipotetiaries the Count Charles William de Finkenstein, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle, and Commander of that of St. John of

TRAITÉ D'AMITIÉ ET DE COMMERCE

Entre sa Majesté le Roi de Prusse, et les Etats-Unis de l'Amérique.

Sa Majesté le Roi de Prusse et les Etats-Unis de l'Amérique, désirant d'entretenir sur un pied stable et permanent les liaisons de bonne intelligence, qui ont si heureusement subsisté jusqu'ici entre Leurs Etats respectifs, et de renouveller pour cet effet le Traité d'Amitié et de Commerce, qui a été conclû entre les deux Puissances à la Haye le 10^{me}. Septembre 1785, pour le terme de dix années, Sa Majesté Prussienne a nommé et constitué Ses Plénipotentiaires, le Sieur Charles Guillaume Comte de Finkenstein, Son Ministre d'Etat, de guerre et de cabinet, Chévalier des Ordres de l'Aigle-noir, et de l'Aigle-rouge, et Commandeur de celui de St. Jean de Jérusalem; le Sieur Philippe-

[1] Concluded July 11, 1799; ratification advised by the Senate February 18, 1800; ratified by the President February 19, 1800; ratifications exchanged June 22, 1800; proclaimed by the President November 4, 1800. This treaty expired by its own limitations June 22, 1810, but the provisions of Articles 13 to 24 inclusive were revived by Article 12 of the treaty of May 1, 1828 (*post*, p. 59), with the exception of the last paragraph of the 19th article relating to treaties with Great Britain. *U. S. Statutes at Large*, vol. 8, p. 162, and vol. 18, pt. 2, p. 648; Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers, 1776–1909*, p. 1486.

Jerusalem; the Baron Philip Charles d'Alvensleben, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle, and of that of St. John of Jerusalem; and the Count Christian Henry Curt de Haugwitz, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle; and the President of the United States has furnished with their full powers John Quincy Adams, a citizen of the United States, and their Minister Plenipotentiary at the Court of His Prussian Majesty; which Plenipotentiaries, after having exchanged their full powers, found in good and due form, have concluded, settled, and signed the following articles:

Charles Baron d'Alvensleben, Son Ministre d'Etat, de guerre et de cabinet, Chevalier des Ordres de l'Aigle-noir, et de l'Aigle-rouge, et de celui de St. Jean de Jérusalem, et le Sieur Chrétien-Henri-Curce-Comte de Haugwitz, Son Ministre d'Etat, de guerre et de cabinet, Chevalier des Ordres de l'Aigle-noir, et de l'Aigle-rouge; et le Président des Etats-Unis a muni de Leur pleinpouvoir Jean-Quincy Adams Citoyen des Etats-Unis, et Leur ministre Plenipotentiaire à la Cour de Sa Majesté Prussienne; Lesquels Plénipotentiaires, aprés avoir échangés leurs pleinpouvoirs, trouvés en bonne et düe forme, ont conclû, arrêté et signé les Articles suivans:

Article I

There shall be in future, as there has been hitherto, a firm, inviolable, and universal peace and a sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America and their citizens on the other, without exception of persons or places.

Article I

Il y aura dans la suite, comme par le passé, une paix ferme, inviolable et universelle et une amitié sincère entre Sa Majesté le Roi de Prusse, Ses héritiers, successeurs et sujets d'une part, et les Etats-Unis de l'Amérique, et Leurs Citoyens d'autre part, sans exception de personnes ou de lieux.

Article II

The subjects of His Majesty the King of Prussia may frequent

Article II

Les sujets de Sa Majesté le Roi de Prusse pourront fréquenter

all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay there no other or greater duties, charges, or fees whatsoever than the most favoured nations are or shall be obliged to pay. They shall also enjoy in navigation and commerce all the rights, privileges, and exemptions which the most favoured nation does or shall enjoy, submitting themselves, nevertheless, to the established laws and usages to which are submitted the citizens of the United States and the most favoured nations.

toutes les côtes et les pays des Etats-Unis de l'Amérique, y résider et trafiquer en toutes sortes de productions, manufactures et marchandises, et n'y payeront d'autres ni de plus forts impôts, charges ou droits, que ceux que les nations les plus favorisées sont ou seront obligées de payer. Ils jouïront aussi dans la navigation et le commerce, de tous les droits, privilèges et exemptions dont jouit ou jouira la nation la plus favorisée se soumettant néanmoins aux lois et usages établis, auxquels sont soumis les Citoyens des Etats-Unis, et les nations les plus favorisées.

Article III

In like manner, the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay, in the dominions of his said Majesty, no other or greater duties, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy, submitting themselves, nevertheless, to the established laws and usages to which are submitted

Article III

Pareillement les Citoyens des Etats Unis de l'Amérique pourront fréquenter toutes les côtes et tous les pays de Sa Majesté le Roi de Prusse, y résider et trafiquer en toutes sortes de productions, manufactures et marchandises, et ne payeront d'autres ni de plus forts impôts, charges ou droits, dans les domaines de Sa dite Majesté, que ceux que la nation la plus favorisée est ou sera obligée de payer; et ils jouïront de tous les droits, privilèges et exemptions dans la navigation et le commerce, dont jouit ou jouïra la nation la plus favorisée; se soumettant néanmoins aux loix et usages établis, auxquels sont soumis les su-

the subjects of His Majesty the King of Prussia and the subjects and the citizens of the most favoured nations.

ARTICLE IV

More especially, each party shall have a right to carry their own produce, manufactures, and merchandize, in their own or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects and citizens of that other freely to purchase them, and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell to them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favoured nation. Nevertheless, His Majesty the King of Prussia and the United States respectively reserve to themselves the right, where any nation restrains the transportation of merchandize to the vessells of the country of which it is the growth or manufacture, to establish against such nation retaliating regulations; and also the right to prohibit in their respective countries the importation and exportation of all merchandize whatsoever, when reasons of state shall require it. In this case the subjects or citizens of either of the

jets de Sa Majesté le Roi de Prusse et les sujets et citoyens des nations les plus favorisées.

ARTICLE IV

En particulier chacune des deux nations aura le droit d'importer ses propres productions, manufactures, et marchandises, à bord de ses propres bâtimens ou de tel autre, dans toutes les parties des domaines de l'autre, où il sera permis à tous les sujets et citoyens de l'autre nation de les acheter librement comme aussi d'y charger les productions, manufactures et marchandises de l'autre, que tous les dits sujets ou citoyens auront la liberté de leur vendre, en payant dans l'un et l'autre cas tels impôts, droits et charges seulement, qui sont ou seront payés par la nation la plus favorisée. Cependant Sa Majesté le Roi de Prusse et les Etats-Unis de l'Amérique se reservent le droit, au cas que quelque nation restreigne le transport des marchandises aux vaisseaux des pays dont elles sont la production ou la manufacture, d'établir envers cette nation des règlemens réciproques; se réservant de plus le droit de prohiber dans Leurs pays respectifs, l'importation ou l'exportation de toute marchandise quelconque, dès que la raison d'état l'éxige. En ce cas les sujets ou

contracting parties shall not import or export the merchandize prohibited by the other. But if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

ARTICLE V

The merchants, commanders of vessels, or other subjects or citizens of either party, shall not, within the ports or jurisdiction of the other, be forced to unload any sort of merchandize into any other vessels, nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE VI

That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed, or detained, it is agreed, that all examinations of goods, required by the laws, shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case the per-

citoyens d'une des Parties Contractantes, ne pourront importer ni exporter les marchandises prohibées par l'autre. Mais si l'une des Parties Contractantes permet à quelque autre nation d'importer ou d'exporter ces mêmes marchandises, les citoyens ou sujets de l'autre Partie Contractante jouïront tout aussitôt d'une liberté pareille.

ARTICLE V

Les marchands, commandans de vaisseaux, et autres sujets ou citoyens de chacune des deux nations, ne seront pas forcés dans les ports ou dans la juridiction de l'autre, de décharger aucunes sortes de marchandises dans d'autres vaisseaux, ni de les recevoir à bord de leurs propres navires, ni d'attendre leur chargement plus longtems qu'il ne leur plaira.

ARTICLE VI

Pour éviter que les vaisseaux de l'une des deux Parties Contractantes ne soyent inutilement molestés, ou détenus dans les ports, ou sous la juridiction de l'autre, il a été convenu, que la visite des marchandises, ordonnée par les loix, se fera avant qu'elles ne soyent chargées sur le navire, et qu'ensuite elles ne seront plus assujetties à aucune visite. Et en général il ne se fera point de recherche à bord du vaisseau, à moins qu'on

son by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is, but no other person shall be molested; nor shall any other goods, nor the vessel, be seized or detained for that cause.

n'y ait chargé clandestinement et illégalement des marchandises prohibées. Dans ce cas, celui par l'ordre duquel elles ont été portées à bord, ou celui qui les y a portées sans ordre, sera soumis aux lois du pays où il se trouve, sans que le reste de l'équipage soit molesté, ni les autres marchandises ou le vaisseau saisis ou détenus par cette raison.

ARTICLE VII

Each party shall endeavour by all the means in their power to protect and defend all vessels and other effects, belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land; and shall use all their efforts to recover and cause to be restored to the right owners their vessels and effects, which shall be taken from them within the extent of their said jurisdiction.

ARTICLE VII

Chacune des deux Parties Contractantes tâchera par tous les moyens qui seront en son pouvoir, de protéger et de défendre tous les vaisseaux et autres effets appartenant aux citoyens ou sujets de l'autre, et se trouvant dans l'étendue de sa juridiction par mer ou par terre et elle employera tous ses efforts pour recouvrer et faire restituer aux propriétaires légitimes, les vaisseaux et effets, qui leur auront été enlevés dans l'étendue de sa dite juridiction.

ARTICLE VIII

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or who entering into port are not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage without molestation, and without being obliged to render ac-

ARTICLE VIII

Les vaisseaux des sujets ou citoyens d'une des deux Parties Contractantes, arrivant sur une côte appartenant à l'autre, mais n'ayant pas dessein d'entrer au port, au qui, en y entrant, ne voudroient pas décharger leurs cargaisons, ou rompre leur charge, auron la liberté de repartir, et de poursuivre leur route sans empêche-

count of their cargo, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments for the safety and convenience of navigators, which duties, charges, and fees shall be the same, and shall be paid on the same footing, as in the case of subjects or citizens of the country where they are established.

ment, et sans être obligés de rendre compte de leur cargaison, ni de payer aucuns impôts, charges ou droits quelconques, excepté ceux établis sur les vaisseaux une fois entrés dans le port, et destinés à l'entretien du port même, ou à d'autres établissemens, qui ont pour but la surêté et la commodité des navigateurs; lesquels droits, charges et impôts seront les mêmes, et se payeront sur le même pied, qu'ils sont acquités par les sujets ou citoyens de l'état où ils sont établis.

Article IX

When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominions of the other, their respective citizens or subjects shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of the cargo be unladed, they shall pay no duties, charges, or fees on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished with re-

Article IX

Au cas que quelque vaisseau appartenant à l'une des deux Parties Contractantes auroit fait naufrage, échoué ou souffert quelque autre dommage, sur les côtes ou sous la domination de l'autre, les sujets ou citoyens respectifs, recevront tant pour eux, que pour leurs vaisseaux et effets la même assistance, qui auroit été fournie aux habitans du pays où l'accident arrive, et ils payeront seulement les mêmes charges et droits auxquels les dits habitans auroient été assujettis en cas pareil. Et si la réparation du vaisseau exigeoit que la cargaison fût déchargée en tout ou en partie, ils ne payeront aucun impôt, charge ou droit, de ce qui sera rembarqué et emporté. L'ancien et barbare droit de naufrage sera entièrement aboli à

spect to the subjects or citizens of the two contracting parties.

ARTICLE X

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise, and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native in like case, untill the lawful owner may take measures for receiving them. And if question should arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person, holding real estate, within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not dis-

l'égard des sujets ou citoyens des deux Parties Contractantes.

ARTICLE X

Les citoyens ou sujets de l'une des Parties Contractantes auront dans les Etats de l'autre la liberté de disposer de leurs biens personnels, soit par testament, donation ou autrement, et leurs héritiers, etant sujets ou citoyens de l'autre Partie Contractante, succéderont à leurs biens, soit en vertu d'un testament, ou ab-intestat, et ils pourront en prendre possession, soit en personne, soit par d'autres agissant en leur place, et en disposer à leur volonté, en ne payant d'autres droits, que ceux auxquels les habitans du pays, où la succession est devenu vacante, sont assujettis en pareille occurrence. Et en cas d'absence des héritiers, on prendra provisoirement des biens qui leur sont échus, les mêmes soins, qu'on auroit pris en pareille occasion des biens des natifs du pays, jusqu'à ce que le propriétaire légitime ait agréé des arrangemens pour recueillir l'héritage. S'il s'éleve des contestations entre différens prétendans ayant droit à la succession, elles seront décidées en dernier ressort selon les loix et par les juges du pays, où la succession est vacante. Et si par la mort de quelque personne possédant des biens-fonds sur le territoire de l'une des Parties Con-

qualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds, without molestation, and exempt from all rights of detraction on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published or hereafter to be published by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XI

The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, and no person shall be molested in that respect for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying-grounds, or other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XII

Experience having proved, that the principle adopted in the twelfth

tractantes, ces biens-fonds venoient à passer, selon les loix du pays, à un citoyen ou sujet de l'autre Partie; celui-ci, si, par sa qualité d'Etranger, il est inhabile de les posséder, obtiendra un délai convenable pour les vendre, et pour en retirer le provenu sans obstacle et exempt de tout droit de retenue de la part du Gouvernement des Etats respectifs. Mais cet article ne dérogera en aucune maniére à la force des lois, qui ont déja été publiées, ou qui le seront dans la suite par Sa Majesté le Roi de Prusse pour prévenir l'émigration de Ses sujets.

ARTICLE XI

Il sera accordé la plus parfaite liberté de conscience et de culte aux citoyens et sujets de chaque Partie Contractante dans les Etats de l'autre; et personne ne sera molesté à cet égard pour quelque cause que ce soit, si ce n'est pour insulte faite à la réligion de l'autre. De plus si des sujets et citoyens de l'une des Parties Contractantes venoient à mourir dans la jurisdiction de l'autre, leurs corps seront enterrés dans les endroits, où l'on a la coutume de faire les enterremens, ou dans tel autre lieu décent et convenable, et ils seront protégés contre toute violence et trouble.

ARTICLE XII

L'expérience ayant démontré que le principe adopté dans l'arti-

article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree, either separately between themselves or jointly with other Powers alike interested, to concert with the great maritime Powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval either of the contracting parties should be engaged in a war to which the other should remain neutral, the ships of war and privateers of the belligerent Power shall conduct themselves towards the merchant vessels of the neutral Power as favourably as the course of the war then existing may permit, observing the principles and rules of the law of nations generally acknowledged.

cle douze du Traité de 1785, selon lequel: *les vaisseaux libres, rendent aussi les marchandises libres,* n'a pas été suffisamment respecté dans les deux dernières guerres, et nommément dans celle qui dure encore, les deux Parties Contractantes se réservent de s'entendre après le retour de la paix générale, soit séparément entr'Elles, soit conjointement avec d'autres Puissances co-intéressées, pour concerter avec les grandes Puissances maritimes de l'Europe, tels arrangemens et tels principes permanens, qui puissent servir à consolider la liberté et la sûreté de la navigation et du commerce neutres dans les guerres futures.

Et si pendant cet intervalle l'une des Parties Contractantes se trouve engagée dans une guerre à laquelle l'autre reste neutre, les vaisseaux de guerre et les armateurs de la Puissance belligérante, se comporteront à l'égard des bâtiments marchands de la Puissance neutre, aussi favorablement que la raison de guerre pour lors existante, pourra le permettre, en observant les principes et les règles du droit des gens généralement reconnus.

Article XIII

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficul-

Article XIII

Dans le cas ou l'une des Parties Contractantes se trouveroit en guerre avec une autre Puissance, il a été convenu que pour prévenir

ties and misunderstandings that usually arise respecting merchandize of contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

les difficultés et les discussions, qui surviennent ordinairement par rapport aux marchandises de contrebande, telles que armes et munitions de toute espèce, aucun de ces articles chargés à bord des vaisseaux des sujets ou citoyens de l'une des Parties, et destinés pour l'ennemi de l'autre ne sera censé contrebande, au point d'impliquer confiscation ou condemnation, et d'entrainer la perte de la propriété des individus. Néanmoins il sera permis d'arrêter ces sortes de vaisseaux et effets et de les retenir pendant tout le tems que le Preneur croira nécessaire pour prévenir les inconvéniens et les dommages qui pourroient en résulter autrement, mais dans ce cas on accordera une compensation raisonnable pour les pertes, qui auront été occasionnées par la saisie. Et il sera permis en outre aux Preneurs d'employer à leur service, en tout ou en partie les munitions militaires détenues, en payant aux Propriétaires la pleine valeur, à déterminer sur le prix qui aura cours à l'endroit de leur destination; mais si dans le cas énoncé d'un vaisseau arrêté pour des articles de contrebande, le maitre du navire consent à délivrer les marchandises suspectes, il aura la liberté de le faire, et le navire ne sera plus amêné dans le port, ni détenu plus longtems, mais aura toute liberté de poursuivre sa route.

All cannons, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, muskets, flints, matches, powder, saltpeter, sulphur, cuirasses, pikes, swords, belts, cartouch boxes, saddles and bridles, beyond the quantity necessary for the use of the ship, or beyond that which every man serving on board the vessel, or passenger, ought to have; and in general whatever is comprized under the denomination of arms and military stores, of what description soever, shall be deemed objects of contraband.

Seront censés objets de contrebande, les canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, bâles, fusils, pierres à feu, mêches, poudre, salpêtre, souffre, cuirasses, piques, épées, ceinturons, poches à cartouches, selles et brides, au délà de la quantité nécessaire pour l'usage du vaisseau, et au déla de celle que doit avoir chaque homme servant sur le vaisseau, ou passager et en général tout ce qui est compris sous la dénomination d'armes et de munitions de guerre, de quelque espèce qu'elles puissent être.

Article XIV

To ensure to the vessels of the two contracting parties the advantage of being readily and certainly known in time of war, it is agreed that they shall be provided with the sea-letters and documents hereafter specified:

1. A passport, expressing the name, the property, and the burthen of the vessel, as also the name and dwelling of the master, which passport shall be made out in good and due form, shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the vessel be under convoy of one or more vessels of war, belonging to the neutral party, the simple declaration of the officer

Article XIV

Pour assurer aux vaisseaux des deux Parties Contractantes, l'avantage d'être promptement et sûrement reconnus en tems de guerre, on est convenu qu'ils devront être munis des lettres de mer et documens spécifiés ci-aprés:

1mo. D'un Passeport, exprimant le nom, le propriétaire et le port du navire, ainsi que le nom et le domicile du maitre. Ces Passeports qui seront expédiés en bonne et due forme, devront être renouvellés toutes les fois, que le vaisseau retournera dans son port, et seront exhibés à chaque réquisition, tant en pleine mer que dans le port. Mais si le navire se trouve sous le convoy d'un ou de plusieurs vaisseaux de guerre, appartenants à la partie neutre, il

commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

2. A charter-party, that is to say, the contract passed for the freight of the whole vessel, or the bills of lading given for the cargo in detail.

3. The list of the ship's company, containing an indication by name and in detail of the persons composing the crew of the vessel. These documents shall always be authenticated according to the forms established at the place from which the vessel shall have sailed.

As their production ought to be exacted only when one of the contracting parties shall be at war, and as their exhibition ought to have no other object than to prove the neutrality of the vessel, its cargo, and company, they shall not be deemed absolutely necessary on board such vessels belonging to the neutral party as shall have sailed from its ports before or within three months after the Government shall have been informed of the state of war in which the belligerent party shall be engaged. In the interval, in default of these specific documents, the neutrality of the vessel may be

suffira que l'officier commandant le convoy, déclare que le navire est de son parti; moyennant quoi cette simple déclaration sera censée établir le fait et dispensera les deux Parties de toute visite ultérieure.

2^do., De la Certe-partie; c'est à dire, ou contràd passé pour le frêt de tout le navire, ou des connoissements donnés pour la cargaison en général; et 3^tio, du rôle d'équipage contenant l'indication nominale et détaillée des personnes, qui composent l'équipage du navire.

Ces documents seront toujours expédiés dans la forme établie à l'endroit, d'où le navire aura mis à la voile.

Comme leur production ne doit être exigée, que dans le cas où l'une des Parties Contractantes seroit en guerre, et que leur exhibition ne doit avoir d'autre but, que de prouver la neutralité des vaisseaux, de leurs équipages, et de leurs cargaisons, ils ne seront pas censés absolument nécessaires à bord des navires de la partie neutre, qui seront sortis de ses ports, avant ou trois mois aprés, que le Gouvernement aura eu connaissance de l'état de guerre où se trouve la partie belligérante. Pendant cet intervalle, le navire pourra au défaut des documens ci-dessus spécifiés, prouver sa

established by such other evidence as the tribunals authorised to judge of the case may deem sufficient.

ARTICLE XV

And to prevent entirely all disorder and violence in such cases, it is stipulated that, when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, public or private, of the other party, such vessel of war shall not send more than two or three men in their boat on board the said neutral vessel to examine her passports and documents. And all persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever, the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE XVI

In times of war, or in cases of urgent necessity, when either of the contracting parties shall be obliged to lay a general embargo, either in all its ports, or in certain particular places, the vessels of

neutralité par tel autre témoignage, que les tribunaux, appellés à juger du cas, trouveront suffisans.

ARTICLE XV

Pour prévenir entièrement tout désordre et toute violence en pareil cas, il a été stipulé, que lorsque les navires de la Partie neutre, navigeant sans convoi, rencontreront quelque vaisseau de guerre public ou particulier de l'autre partie, le vaisseau de guerre n'enverra pas plus de deux ou trois hommes, dans sa chaloupe à bord du navire neutre pour examiner les passeports et documents. Et toutes les personnes appartenantes à quelque vaisseau de guerre public ou particulier, qui molesteront ou insulteront en quelque manière que ce soit l'équipage, les vaisseaux, ou effets de l'autre partie, seront responsables en leurs personnes, et en leurs biens de tous dommages et intérêts, pour lesquels il sera donné caution suffisante par tous les commandans de vaisseaux armés en course, avant qu'ils reçoivent leurs commissions.

ARTICLE XVI

Dans les tems de guerre et les cas de nécessité urgente, où l'une des Parties Contractantes se verroit obligée d'établir un embargo général, soit dans tous les ports de Sa domination, soit dans certains

the other party shall be subject to this measure, upon the same footing as those of the most favoured nations, but without having the right to claim the exemption in their favour stipulated in the sixteenth article of the former treaty of 1785. But on the other hand, the proprietors of the vessels which shall have been detained, whether for some military expedition, or for what other use soever, shall obtain from the Government that shall have employed them an equitable indemnity, as well for the freight as for the loss occasioned by the delay. And furthermore, in all cases of seizure, detention, or arrest, for debts contracted or offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE XVII

If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by the Power at war, they shall be restored to the first proprietor, upon the conditions hereafter stipulated in the twenty-first article for cases of recapture.

ports particuliers, les vaisseaux de l'autre Partie resteront assujettis à cette mésure, sur le même pied, que le seront les navires des nations les plus avantagées, sans pouvoir réclamer l'exemption, qui avoit été stipulée en leur faveur dans l'article 16 de l'ancien Traité de 1785. Mais d'un autre coté les propriétaires des vaisseaux, qui auront été retenus, soit pour quelque expédition militaire, soit pour tel autre usage que ce soit, obtiendront du Gouvernement qui les aura employés une indemnité équitable, tant pour le frêt que pour les pertes occasionnées par le retard.

De plus et dans tous les cas de saisie, de détention ou d'arrêt, soit pour dettes contractées, ou offenses commises par quelque citoyen ou sujet de l'une des Parties Contractantes dans la jurisdiction de l'autre, on procédera uniquement par ordre et par autorité de la justice, et suivant les voyes ordinaires en pareil cas usitées.

ARTICLE XVII

S'il arrivoit que les batimens ou effets de la Puissance neutre fussent pris par l'ennemi de l'autre, ou par un pirate, et ensuite repris par la Puissance en guerre, ils seront restitués au premier propriétaire aux conditions qui seront stipulées ci-après dans l'article 21 pour les cas de reprise.

ARTICLE XVIII

If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accidents, shall take refuge, with their vessels or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with all refreshments, provisions, and other things necessary for their sustenance, health, and accom[m]odation, and for the repair of their vessels.

ARTICLE XVIII

Lorsque les citoyens ou sujets de l'une des deux Parties Contractantes seront forcés par des tempêtes ou par la poursuite des corsaires ou vaisseaux ennemis ou par quelqu'autre accident, à se réfugier avec leurs vaisseaux ou effets dans les havres, ou dans la juridiction de l'autre, ils seront reçus, protégés et traités avec humanité et honnêteté. Il leur sera permis de se pourvoir à un prix raisonnable de rafraichissements, de provisions et de toutes choses nécessaires, pour leur subsistance, santé et commodité, et pour la réparation de leurs vaisseaux.

ARTICLE XIX

The vessels of war, public and private, of both parties, shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to shew. But, conformably to the

ARTICLE XIX

Les vaisseaux de guerre publics et particuliers des deux Parties Contractantes pourront conduire en toute liberté, partout où il leur plaira, les vaisseaux et effets qu'ils auront pris sur leurs ennemis, sans être obligés de payer aucuns impôts, charges ou droits, aux Officiers de l'Amirauté, des Douanes ou autres. Ces prises ne pourront être non plus ni arrêtées, ni visitées, ni soumises à des procédures légales, en entrant dans le port de l'autre partie, mais elles pourront en sortir librement, et être conduites en tout temps par le vaisseau preneur aux endroits portés par les commissions,

treaties existing between the United States and Great Britain, no vessel that shall have made a prize upon British subjects shall have a right to shelter in the ports of the United States, but if forced therein by tempests, or any other danger or accident of the sea, they shall be obliged to depart as soon as possible.

dont l'officier commandant le dit vaisseau sera obligé de faire montre.

Mais, conformément aux Traités subsistans entre les Etats-Unis et la Grande Bretagne, tout vaisseau qui aura fait une prise sur des sujets de cette dernière Puissance ne sauroit obtenir un droit d'asile dans les ports des Etats-Unis et s'il est forcé d'y rélâcher par des tempêtes ou quelque autre danger, ou accident de mer, il sera obligé d'en repartir le plutôt possible.

Article XX

No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war any commission or letter of marque, for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate; nor shall either party hire, lend, or give any part of its naval or military force to the enemy of the other, to aid them offensively or defensively against the other.

Article XX

Aucun citoyen ou sujet de l'une des deux Parties Contractantes, n'acceptera d'une Puissance, avec laquelle l'autre pourroit être en guerre, ni commission, ni lettre de marque, pour armer en course contre cette dernière, sous peine d'être puni comme pirate. Et ni l'un ni l'autre des deux Etats ne louera, prêtera, ou donnera une partie de ses forces navales ou militaires à l'ennemi de l'autre, pour l'aider à agir offensivement ou défensivement contre l'Etat qui est en guerre.

Article XXI

If the two contracting parties should be engaged in a war against a common enemy, the following points shall be observed between them:

Article XXI

S'il arrivoit que les deux Parties Contractantes fussent en mêmes tems en guerra contre un ennemie commun, on observera de part et d'autre les points suivans:

1. If a vessel of one of the parties, taken by the enemy, shall, before being carried into a neutral or enemy's port, be retaken by a ship of war or privateer of the other, it shall, with the cargo, be restored to the first owners, for a compensation of one-eighth part of the value of the said vessel and cargo, if the recapture be made by a public ship of war, and one-sixth part, if made by a privateer.

2. The restitution in such cases shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

3. The vessels of war, public and private, of the two parties, shall reciprocally be admitted with their prizes into the respective ports of each, but the said prizes shall not be discharged or sold there, until their legality shall have been decided according to the laws and regulations of the State to which the captor belongs, but by the judicatories of the place into which the prize shall have been conducted.

4. It shall be free to each party to make such regulations as they shall judge necessary, for the conduct of their respective vessels of war, public and private, relative to the vessels, which they shall take,

1^mo^., Lorsqu'un navire de l'une des deux nations sera repris par les vaisseaux de guerre ou armateurs de l'autre, avant d'avoir été conduit dans un port ennemi ou neutre, il sera restitué avec sa cargaison au premier propriétaire, moyennant une rétribution d'un *huitième* de la valeur du navire et de la cargaison, si la reprise a été faite par un vaisseau de guerre, et d'un *sixième,* si elle a été faite par un armateur.

2^do^., Dans ces cas, la restitution n'aura lieu qu'après les preuves faites de la propriété, sous caution de la quote-part, qui en revient à ceux qui ont repris le navire.

3^tio^., Les vaisseaux de guerre publics et particuliers des deux Parties Contractantes seront admis réciproquement avec leurs prises, dans les ports respectifs cependant ces prises ne pourront y être déchargées ni vendues, qu'après que la légitimité de la prise aura été décidée suivant les lois et règlemens de l'Etat dont le preneur est sujet, mais par la justice du lieu où la prise aura été conduite.

4^to^., Il sera libre à chacune des Parties Contractantes de faire tels règlemens, qu'Elles jugeront nécessaires, rélativement à la conduite que devront tenir respectivement leurs vaisseaux de

and carry into the ports of the two parties.

ARTICLE XXII

When the contracting parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall upon all occasions take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course, against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE XXIII

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the

guerre publics et particuliers à l'égard des batimens qu'ils auront pris et aménés dans les ports des deux Puissances.

ARTICLE XXII

Lorsque les Parties Contractantes seront engagées en guerre contre un ennemi commun, ou qu'Elles seront neutres toutes deux, les vaisseaux de guerre de l'une prendront en toute occasion, sous leur protection les navires de l'autre, qui font avec eux la même route, et ils les défendront aussi longtems qu'ils feront voile ensemble, contre toute force et violence, et de la même manière qu'ils protégeroient et défendroient les navires de leur propre nation.

ARTICLE XXIII

S'il survient une guerre entre les Parties Contractantes, les marchands de l'un des deux Etats, qui résideront dans l'autre, auront la permission d'y rester encore neuf mois, pour récueillir leurs dettes actives et arranger leurs affaires après quoi ils pourront partir en toute liberté, et emporter tous leurs biens, sans être molestés ni empêchés. Les femmes et les enfans, les gens de lettres de toutes les facultés, les cultivateurs, artisans, manufacturiers et pêcheurs, qui ne sont point armés, et qui habitent des villes, villages ou

common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

places non-fortifiées, et en général tous ceux dont la vocation tend à la subsistance et à l'avantage commun du genre humain, auront la liberté de continuer leurs professions respectives, et ne seront point molestés en leurs personnes, ni leurs maisons ou leurs bien incendiés ou autrement détruits, ni leurs champs ravagés par les armées de l'ennemi, au pouvoir duquel ils pourroient tomber par les événemens de la guerre; mais si l'on se trouve dans la nécessité de prendre quelque chose de leurs propriétés pour l'usage de l'armée ennemie, la valeur en sera payée à un prix raisonnable.

ARTICLE XXIV

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to the world and to each other that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies or any other parts of Asia or Africa, but that they shall be placed in some parts of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships,

ARTICLE XXIV

Afin d'adoucir le sort des prisonniers de guerre et de ne les point exposer à être envoyés dans des climats éloignés et rigoureux, ou resserrés dans des habitations étroites et malsaines, les deux Parties Contractantes s'engagent solemnellement l'une envers l'autre et à la face de l'Univers, qu'Elles n'adopteront aucun de ces usages; que les prisonniers qu'Elles pourroient faire l'une sur l'autre ne seront transportés ni aux Indes Orientales, ni dans aucune contrée de l'Asie ou de l'Afrique, mais qu'on leur assignera en Europe, ou en Amérique, dans les territoires respec-

nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they shall allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with or set off against any others, nor the balances due on them be withheld as a satisfaction or reprizal for any other article or for any other cause, real or pretended, whatever. That each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate canton-

tifs des Parties Contractantes un séjour situé dans un air sain; qu'ils ne seront point confinés dans des cachôts ni dans des prisons, ni dans des vaisseaux de prison; qu'ils ne seront pas mis aux fers, ni garotés, ni autrement privés de l'usage de leurs membres; que les officiers seront rélachés sur leur parole d'honneur dans l'enceinte de certains districts, qui leur seront fixés, et qu'on leur accordera des logemens commodes; que les simples soldats seront distribués dans des cantonnemens ouverts, assez vastes pour prendre l'air et l'exercice, et qu'ils seront logés dans des barraques aussi spatieuses et aussi commodes que le sont celles des troupes de la Puissance au pouvoir de laquelle se trouvent les prisonniers; que cette Puissance fera pourvoir journellement les officiers, d'autant de rations, composés des mêmes articles et de la même qualité, dont jouissent en nature ou en équivalent, les officiers du même rang, qui sont à son propre service; qu-Elle fournira également à tous les autres prisonniers, une ration pareille à celle qui est accordée au soldat de sa propre armée. Le montant de ces dépenses sera payé par l'autre Puissance, d'après une liquidation de compte, à arrêter reciproquement pour l'entretien dès prisonniers, à la fin de la

ment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations.

guerre, et ces comptes ne seront point confondus ou balancés avec d'autres comptes, ni la solde qui en est düe, retenue comme compensation ou represailles pour tel autre article, ou telle autre prétension réelle ou supposée. Il sera permis à chacune des deux Puissances d'entretenir un commissaire de leur choix, dans chaque cantonnement des prisonniers, qui sont au pouvoir de l'autre. Ces commissaires auront la liberté de visiter les prisonniers, aussi souvent qu'ils le désireront ils pourront également recevoir et distribuer les douceurs, que les parents ou amis des prisonniers leur feront parvenir; enfin il leur sera libre encore de faire leurs rapports par lettres ouvertes, à ceux qui les employent. Mais si un officier manquoit à sa parole d'honneur, ou qu'un autre prisonnier sortit des limites qui auront été fixées à son cantonnement, un tel officier ou autre prisonnier sera frustré individuellement des avantages stipulés dans cet article, pour sa relaxation sur parole d'honneur, ou pour son cantonnement. Les deux Puissances Contractantes ont déclaré en outre, que ni le pretexte que la guerre rompt les Traités, ni tel autre motif quelconque ne sera censé annuller ou suspendre cet article, et le précedent mais qu'au contraire le tems

de la guerre est précisément celui pour lequel ils ont été stipulés et durant lequel ils seront observés aussi saintement que les articles les plus universellement reconnus par le Droit de la nature et des Gens.

ARTICLE XXV

The two contracting parties have granted to each other the liberty of having each in the ports of the other Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favoured nations; but if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ARTICLE XXV

Les deux Parties Contractantes se sont accordé mutuellement la faculté de tenir dans Leurs ports respectifs des Consuls, Vice-consuls, Agens, et Commissaires de Leurs choix, et ils y jouïront des mêmes privilèges et pouvoirs dont jouissent ceux des nations les plus favorisées. Mais dans le cas où tel ou autre de ses Consuls veuille faire le commerce, il sera soumis aux mêmes lois et usages auxquels sont soumis les particuliers de sa nation à l'endroit où il réside.

ARTICLE XXVI

If either party shall hereafter grant to any other nation any particular favour in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE XXVI

Lorsque l'une des deux Parties Contractantes accordera dans la suite quelque faveur particulière en fait de navigation ou de commerce à d'autres nations, elle deviendra aussitôt commune à l'autre Partie Contractante, et celle-ci jouïra de cette faveur gratuitement, si la concession est gratuite, ou en accordant la même compensation si la concession est conditionelle.

ARTICLE XXVII

His Majesty the King of Prussia and the United States of America agree that this treaty shall be in force during the term of ten years from the exchange of the ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war shall continue in force until the conclusion of the treaty which shall restore peace.

This treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature, or sooner if possible.

In testimony whereof, the Plenipotentiaries before mentioned have hereto subscribed their names and affixed their seals. Done at Berlin, the eleventh of July, in the year one thousand seven hundred and ninety-nine.

ARTICLE XXVII

Sa Majesté le Roi de Prusse et les Etats-Unis de l'Amérique sont convenus que le présent Traité aura son plein effet pendant l'espace de *dix années,* à compter du jour de l'échange des Ratifications, et que si l'expiration de ce terme arrivoit dans le cours d'une guerre entr'-Eux, les articles ci-dessus stipulés pour règler Leur conduite en temps de guerre, conserveront toute leur force jusqu'à la conclusion du Traité, qui rétablira la paix.

Le présent Traité sera ratifié de part et d'autre, et les ratifications seront échangées dans l'espace d'une année, à compter du jour de la signature, ou plutôt si faire se peut.

En foi de quoi les Plénipotentiaires susnommés ont signé le présent Traité et y ont apposé le cachet de leurs armes. Fait à Berlin le onze Juillet, l'an mille sept cents quatre-vingt dix-neuf.

JOHN QUINCY ADAMS. [L. S.]
CHARLES GUILLAUME COMTE DE FINKENSTEIN. [L. S.]
PHILIPPE CHARLES D'ALVENSLEBEN. [L. S.]
CHRETIEN HENRI CURCE COMTE DE HAUGWITZ. [L. S.]

Text of the Treaty of 1828[1]

Treaty of Commerce and Navigation

Between the United States of America, and His Majesty the King of Prussia.

The United States of America and His Majesty the King of Prussia, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States, of extending, also, and consolidating the commercial intercourse between them, and convinced that this object cannot better be accomplished than by adopting the system of an entire freedom of navigation, and a perfect reciprocity, based upon principles of equity equally beneficial to both countries, and applicable in time of peace as well as in time of war, have, in consequence, agreed to enter into negotiations for the conclusion of a treaty of navigation and commerce; for which purpose the President of the United States has

Traité de Commerce et de Navigation

Entre Sa Majesté le Roi de Prusse, et les Etats Unis d'Amérique.

Sa Majesté le Roi de Prusse, et les Etats Unis d'Amérique, également animés du desir de maintenir les rapports de bonne intelligence qui ont si heureusement subsisté jusqu'ici entre Leurs Etats respectifs; et d'en etendre et consolider les relations commerciales; et convaincus que cet objet ne sauroit être mieux rempli qu'en adoptant le système d'une entiere liberté de navigation, et d'une parfaite réciprocité, basé sur des principes d'équité également avantageux aux deux Pays, et applicables en temps de paix comme en temps de guerre; sont, en conséquence, convenus d'entrer en négociation, pour conclude un Traité de Commerce et de Navigation. A cet effet, Sa Majesté le Roi de Prusse a muni de Pleins Pouvoirs le Sieur

[1] Concluded May 1, 1828; ratification advised by the Senate May 4, 1828; ratification again advised and time for exchange of ratifications extended by the Senate March 9, 1829; ratifications exchanged March 14, 1829; proclaimed by the President March 14, 1829. *U. S. Statutes at Large*, vol. 8, p. 378, and vol. 18, pt. 2, p. 656; Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers, 1776–1909*, p. 1496.

conferred full powers on Henry Clay, their Secretary of State; and His Majesty the King of Prussia has conferred like powers on the Sieur Ludwig Niederstetter, Chargé d'Affaires of His said Majesty near the United States; and the said Plenipotentiaries, having exchanged their said full powers, found in good and due form, have concluded and signed the following articles:

ARTICLE I

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty, to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

ARTICLE II

Prussian vessels arriving either laden or in ballast in the ports of the United States of America, and, reciprocally, vessels of the United

Ludwig Niederstetter, Chargé d'Affaires de Sa dite Majesté près les Etats Unis d'Amérique; et le Président des Etats Unis d'Amérique a muni des mêmes Pouvoirs Henri Clay, Leur Secrétaire d'Etat; lesquels Plénipotentiaires, après avoir échangé leurs dits Pleins Pouvoirs, trouvés en bonne et due forme, ont arrêté et signé les articles suivans:

ARTICLE I

Il y aura, entre les Territoires des Hautes Parties Contractantes, liberté et réciprocité de commerce et de navigation. Les habitans de Leurs Etats respectifs pourront, réciproquement, entrer dans les ports, places et rivieres des territoires de chacune d'Elles, partout où le commerce étranger est permis. Ils seront libres de s'y arrêter, et résider dans quelque partie que ce soit desdits territoires, pour y vaquer à leurs affaires; et ils jouiront, à cet effet, de la même sécurité et protection que les habitans du pays dans lequel ils résideront, à charge de se soumettre aux lois et ordonnances y établies.

ARTICLE II

Les bâtimens Prussiens arrivant, sur lest ou chargés dans les ports des Etats-Unis d'Amérique; et, réciproquement, les bâtimens

States arriving either laden or in ballast in the ports of the Kingdom of Prussia, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light-houses, pilotage, salvage, and port charges. as well as to the fees and perquisites of public officers, and all other duties and charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever.

des Etats Unis, arrivant, sur lest ou chargés, dans les ports du Royaume de Prusse, seront traités, à leur entrée, pendant leur séjour, et à leur sortie, sur le même pied que les bâtimens nationaux venant du même lieu, par rapport aux droits de tonnage, de fanaux, de pilotage, de sauvetage et de port, ainsi qu'aux vacations des officiers publics, et à tout autre droit ou charge, de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques.

ARTICLE III

All kinds of merchandise and articles of commerce either the produce of the soil or the industry of the United States of America, or of any other country, which may be lawfully imported into the ports of the Kingdom of Prussia, in Prussian vessels, may also be so imported in vessels of the United States of America, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in Prussian vessels. And, recipro-

ARTICLE III

Toute espèce de marchandises et objets de commerce, provenant du sol ou de l'industrie des Etats Unis d'Amérique, ou de tout autre pays, qui pourront légalement être importés dans les ports du Royaume de Prusse sur des bâtimens Prussiens, pourront également y être importés sur des bâtimens des Etats Unis d'Amérique, sans payer d'autres, ou plus forts droits ou charges, de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques, que s'ils étoient importés sur des bâtimens Prussiens.

cally, all kind of merchandise and articles of commerce, either the produce of the soil or of the industry of the Kingdom of Prussia, or of any other country, which may be lawfully imported into the ports of the United States in vessels of the said States, may also be so imported in Prussian vessels, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in vessels of the United States of America.

Et réciproquement, tout espéce de marchandises et objets de commerce, provenant du sol ou de l'industrie du Royaume de Prusse, ou de tout autre pays, qui pourront légalement être importés dans les ports des Etats Unis d'Amérique sur des bâtimens desdits Etats, pourront également y être importés sur des bâtimens Prussiens, sans payer d'autres ou plus forts droits ou charges, de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quel-conques, que s'ils Etoient importés sur des bâtimens des Etats Unis d'Amérique.

ARTICLE IV

To prevent the possibility of any misunderstanding, it is hereby declared that the stipulations contained in the two preceding articles are to their full extent applicable to Prussian vessels and their cargoes arriving in the ports of the United States of America, and, reciprocally, to vessels of the said States and their cargoes, arriving in the ports of the Kingdom of Prussia, whether the said vessels clear directly from the ports of the country to which they respectively belong, or from the ports of any other foreign country.

ARTICLE IV

Afin de prévenir tout mésentendu et équivoque possibles, il est declaré que les stipulations contenues dans les deux articles précédens sont, dans toute leur plénitude, applicables aux bâtimens Prussiens et leurs cargaisons, arrivant dans les ports des Etats Unis d'Amérique; et réciproquement, aux bâtimens des dits Etats, et leurs cargaisons, arrivant dans les ports du Royaume de Prusse, soit que les dits bâtimens viennent des ports du pays auquel ils appartiennent, soit de ceux de tout autre pays étranger.

ARTICLE V

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States, or of Prussia, to or from the ports of the United States, or to or from the ports of Prussia, which shall not equally extend to all other nations.

ARTICLE V

Il ne sera imposé d'autres ni de plus forts droits sur l'importation dans les Etats Unis, des articles provenant du sol ou de l'industrie du Royaume de Prusse; et il ne sera imposé d'autres ni de plus forts droits, sur l'importation dans le Royaume de Prusse des articles provenant du sol ou de l'industrie des Etats Unis, que ceux qui sont, ou seront imposés sur les mêmes articles provenant du sol ou de l'industrie de tout autre pays étranger. De même il ne sera imposé sur l'importation ou sur l'exportation des articles provenant du sol ou de l'industrie des Etats Unis, ou du Royaume de Prusse, à l'entrée ou à la sortie des ports des Etats Unis, ou de ceux du Royaume de Prusse, aucune prohibition qui ne soit pas également applicable à toute autre nation.

ARTICLE VI

All kinds of merchandise and articles of commerce, either the produce of the soil or of the industry of the United States of America, or of any other country, which may be lawfully exported from the ports of the said United States in national vessels, may also be exported therefrom in Prussian vessels without paying other or higher duties or charges, of whatever

ARTICLE VI

Toute espèce de marchandises et objets de commerce provenant du sol ou de l'industrie des Etats Unis, ou de tout autre pays, qui pourront être légalement exportés des ports des dits Etats, sur des bâtimens nationaux, pourront également en être exportés sur des bâtimens Prussiens, sans payer d'autres ni de plus forts droits ou charges, de quelque espèce ou dé-

kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in vessels of the United States of America.

An exact reciprocity shall be observed in the ports of the Kingdom of Prussia, so that all kind of merchandise and articles of commerce, either the produce of the soil or the industry of the said Kingdom, or of any other country, which may be lawfully exported from Prussian ports in national vessels, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in Prussian vessels.

nomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques, que si ces mêmes marchandises ou denrées avoient été exportées par bâtimens des Etats Unis d'Amérique.

Une parfaite réciprocité sera observée dans les ports du Royaume de Prusse, de sorte que toute espèce de marchandises et objets de commerce, provenant du sol ou de l'industrie du Royaume de Prusse, ou de tout autre pays, qui pourront être légalement exportés des ports du dit Royaume sur des bâtimens nationaux, pourront également en être exportés sur des bâtimens des Etats Unis d'Amérique sans payer d'autres ou de plus forts droits ou charges, de quelque espèce ou dénomination que ce soit, perçus au nom ou au profit du Gouvernement, des autorités locales, ou d'établissemens particuliers quelconques, que si ces marchandises ou denrées avoient été exportées sur des bâtimens Prussiens.

Article VII

The preceding articles are not applicable to the coastwise navigation of the two countries, which is respectively reserved by each of the high contracting parties exclusively to itself.

Article VII

Les articles précédens ne sont pas applicables à la navigation de côtes, ou cabotage de chacun des deux pays, que l'Une et l'Autre des Hautes Parties Contractantes se réservent exclusivement.

ARTICLE VIII

No priority or preference shall be given, directly or indirectly, by either of the contracting parties, nor by any company, corporation, or agent, acting on their behalf or under their authority, in the purchase of any article of commerce, lawfully imported, on account of or in reference to the character of the vessel, whether it be of the one party or of the other, in which such article was imported; it being the true intent and meaning of the contracting parties, that no distinction or difference whatever shall be made in this respect.

ARTICLE VIII

Il ne sera accordé, ni directement, ni indirectement, par l'Une ou par l'Autre des Parties Contractantes, ni par aucune compagnie, corporation, ou agent, agissant en son nom, ou par son autorité, aucune priorité ou préférence quelconque, pour l'achat d'aucun objet de commerce, légalement importé, à cause ou en considération de la nationalité du navire qui auroit importé les dits objets, soit qu'il appartienne à l'Une des Parties, soit à l'Autre; l'intention bien positive des Parties Contractantes étant, qu'aucune différence ou distinction quelconque n'ait lieu à cet égard.

ARTICLE IX

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE IX

Si l'Une des Parties Contractantes accorde, par la suite, à d'autres nations, quelque faveur particuliere, en fait de commerce ou de navigation, cette faveur deviendra aussitot commune à l'autre Partie, qui en jouira gratuitement, si la concession est gratuite; ou en accordant la même compensation, si la concession est conditionnelle.

ARTICLE X

The two contracting parties have granted to each other the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their

ARTICLE X

Les deux Parties Contractantes se sont accordé mutuellement la faculté de tenir, dans leurs ports respectifs, des Consuls, Vice-Consuls, Agens et Commissaires de

own appointment, who shall enjoy the same privileges and powers as those of the most favored nations. But if any such Consul shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

The Consuls, Vice-Consuls, and Commercial Agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

ARTICLE XI

The said Consuls, Vice-Consuls, and Commercial Agents are authorised to require the assistance of the local authorities, for the

leur choix, qui jouiront des mêmes privilèges et pouvoirs dont jouissent ceux des nations les plus favorisées. Mais dans le cas où les dits Consuls veuillent faire le commerce, ils seront soumis aux mêmes lois et usages, auxquels sont soumis les particuliers de leur nation à l'endroit où ils résident.

Les Consuls, Vice Consuls, et Agens commerciaux, auront le droit, comme tels, de servir de juges et d'arbitres dans les différens qui pourroient s'élever entre les capitaines et les équipages des bâtimens de la nation dont ils soignent les intérêts, sans que les autorités locales puissent y intervenir, à moins que la conduite des équipages ou du capitaine ne troublât l'ordre ou la tranquillité du pays; ou que les dits Consuls, Vice Consuls ou Agens commerciaux, ne réquissent leur intervention pour faire exécuter ou maintenir leurs décisions. Bien entendu que cette espèce de jugement ou d'arbitrage ne sauroit, pourtant, priver les parties contendantes du droit qu'elles ont, à leur retour de recourir aux autorités judiciaires de leur pays.

ARTICLE XI

Les dits Consuls, Vice Consuls, ou Agens commerciaux, seront autorisés à requérir l'assistance des autorités locales, pour la

search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crew, or by other official documents, that such individuals formed part of the crews; and, on this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But if not sent back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

recherche, l'arrestation, la détention et l'emprisonnement des déserteurs des navires de guerre et marchands de leur pays; ils s'adresseront, pour cet objet, aux tribunaux, juges et officiers compétens, et reclameront, par écrit, les deserteurs sus-mentionnés, en prouvant, par la communication des régistres des navires, ou rôles de l'équipage, ou par d'autres documens officiels, que de tels individus ont fait partie desdits équipages et cette réclamation ainsi prouvée, l'extradition ne sera point refusée. De tels déserteurs, lorsqu'ils auront été arrêtés, seront mis à la disposition desdits Consuls, Vice Consuls ou Agens commerciaux, et pourront être enfermés dans les prisons publiques, à la réquisition et aux frais de ceux qui les reclament, pour être envoyés aux navires auxquels ils appartenoient, ou à d'autres de la même nation. Mais s'ils ne sont pas renvoyés dans l'espace de trois mois, à compter du jour de leur arrestation, ils seront mis en liberté, et ne seront plus arrêtés pour la même cause. Toutefois, si le déserteur se trouvoit avoir commis quelque crime ou délit, il pourra être sursis à son extradition, jusqu'à ce que le tribunal saisi de l'affaire, aura rendu sa sentence, et que celle-ci ait reçu son exécution.

ARTICLE XII

The twelfth article of the treaty of amity and commerce, concluded between the parties in 1785, and the articles from the thirteenth to the twenty-fourth, inclusive, of that which was concluded at Berlin in 1799, with the exception of the last paragraph in the nineteenth article, relating to treaties with Great Britain, are hereby revived with the same force and virtue as if they made part of the context of the present treaty, it being, however, understood that the stipulations contained in the articles thus revived shall be always considered as in no manner affecting the treaties or conventions concluded by either party with other powers, during the interval between the expiration of the said treaty of 1799, and the commencement of the operation of the present treaty.

The parties being still desirous, in conformity with their intention declared in the twelfth article of the said treaty of 1799, to establish between themselves, or in concert with other maritime Powers, further provisions to ensure just protection and freedom to neutral navigation and commerce, and which may, at the same time, advance the cause of civilization and humanity, engage again to treat on this subject at some future and convenient period.

ARTICLE XII

L'Article douze du Traité d'Amitié et de Commerce, conclu entre les Parties en 1785; et les Articles Treize et suivans, jusqu'à l'Article Vingt-quatre, inclusivement, du Traité conclu à Berlin, en 1799, en exceptant le dernier paragraphe de l'Article Dix-neuf, touchant les Traités avec la Grande Bretagne, sont remis en vigueur, et auront la même force et valeur que s'ils faisoient partie du présent Traité: il est entendu, cependant que les stipulations contenues dans les Articles ainsi remis en vigueur, seront toujours censées ne rien changer aux Traités et Conventions conclus de part et d'autre, avec d'autres Puissances, dans l'intervalle ecoulé entre l'expiration dudit Traité de 1799, et le commencement de la mise en vigueur du présent Traité.

Les Parties Contractantes désirant toujours, conformément à l'intention déclarée dans l'Article Douze dudit Traité de 1799, pourvoir, entre Elles, ou conjointement avec d'autres Puissances maritimes, à des stipulations ultérieures qui puissent servir à garantir une juste protection et liberté au commerce et à la navigation des neutres, et à aider la cause de la civilisation et de l'humanité, s'engagent ici, comme alors à concerter ensemble sur ce sujet, à quelque époque future et convenable.

ARTICLE XIII

Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom, with respect to the various events which may take place, it is agreed that a merchant vessel belonging to either of them, which may be bound to a port supposed at the time of its departure to be blockaded, shall not, however, be captured or condemned for having attempted a first time to enter said port, unless it can be proved that said vessel could and ought to have learnt, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once shall, during the same voyage, attempt a second time to enter the same blockaded port, during the continuance of the said blockade, shall then subject themselves to be detained and condemned.

ARTICLE XIII

Vû l'éloignement des Pays respectifs des deux Hautes Parties Contractantes, et l'incertitude qui en résulte sur les divers événemens qui peuvent avoir lieu; il est convenu qu'un bâtiment marchand, appartenant à l'Une d'Elles, qui se trouveroit destiné pour un port supposé bloqué, au moment du départ de ce bâtiment, ne sera cependant pas capturé ou condamné, pour avoir essayé une premiere fois d'entrer dans ledit port, à moins qu'il ne puisse être prouvé que ledit bâtiment avoit pû et dû apprendre en route que l'état de blocus de la place en question duroit encore: mais les bâtimens qui, après avoir été renvoyés une fois, essayeroient, pendant le même voyage d'entrer une seconde fois dans le même port bloqué, durant la continuation de ce blocus, se trouveront alors sujets à être détenus et condamnés.

ARTICLE XIV

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testa-

ARTICLE XIV

Les Citoyens ou Sujets de chacune des Parties Contractantes, auront, dans les Etats de l'autre, la liberté de disposer de leurs biens personnels, soit par testament, donation, ou autrement, et leurs héritiers, étant sujets ou citoyens de l'autre Partie Contractante, succéderont à leurs

ment or ab intestato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native, in like case, until the lawful owner may take measures for receiving them. And if question should arise among several claimants to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction, on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published, by His Maj-

biens, soit en vertu d'un testament, ou *ab intestato,* et ils pourront en prendre possession, soit en personne, soit par d'autres agissant en leur place, et en disposeront à leur volonté, en ne payant d'autres droits que ceux auxquels les habitans du pays où sè trouvent lesdits biens sont assujettis en pareille occasion. En cas d'absence des héritiers, on prendra provisoirement desdits biens les mêmes soins qu'on auroit pris en pareille occasion des biens des natifs du pays, jusqu'à ce que le propriétaire légitime ait agréé des arrangemens pour recueillir l'héritage. S'il s'éleve des contestations entre différens prétendans ayant droit à la succession, elles seront décidées en dernier ressort, selon les lois et par les juges du pays où la succession est vacante. Et si, par la mort de quelque personne possédant des biens-fonds sur le territoire de l'une des Parties Contractantes, ces biens-fonds venoient à passer selon les lois du pays, à un citoyen ou sujet de l'autre Partie, celui-ci, si, par sa qualité d'étranger, il est inhabile à les posséder, obtiendra un délai convenable pour les vendre, et pour en retirer le produit sans obstacle, et exempt de tout droit de retenue de la part du Gouvernement des Etats respectifs. Mais cet

esty the King of Prussia, to prevent the emigration of his subjects.

article ne dérogera en aucune maniere à la force des lois qui ont déja été publiées, ou qui le seront par la suite, par Sa Majesté le Roi de Prusse, pour prévenir l'émigration de ses sujets.

ARTICLE XV

The present treaty shall continue in force for twelve years, counting from the day of the exchange of the ratifications; and if twelve months before the expiration of that period, neither of the high contracting parties shall have announced, by an official notification to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on until the expiration of the twelve months, which will follow a similar notification, whatever the time at which it may take place.

ARTICLE XV

Le presént Traite sera en vigueur pendant douze années à compter du jour de l'échange des Ratifications; et si, douze mois avant l'expiration de ce terme, ni l'Une ni l'Autre des Hautes Parties Contractantes, n'annonce à l'autre, par une déclaration officielle, son intention d'en faire cesser l'effet, ledit Traité restera obligatoire pendant un an au-delà de ce terme, et ainsi de suite, jusqu'à expiration des douze mois qui suivront une telle declaration, à quelque époque qu'elle ait lieu.

ARTICLE XVI

This treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Prussia, and the ratifications shall be exchanged in the city of Washington, within nine months from the date of the signature hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed the

ARTICLE XVI

Le présent Traité sera approuvé et ratifié par Sa Majesté le Roi de Prusse, et par le Président des Etats Unis d'Amérique, par, et avec l'avis et le consentement du Sénat desdits Etats, et les Ratifications en seront échangées en la ville de Washington, dans l'espace de neuf mois, à dater de ce jour, ou plutôt, si faire se peut.

En foi de quoi les Plénipotentiaires respectifs ont signé les Ar-

above articles both in the French and English languages, and they have thereto affixed their seals; declaring, nevertheless, that the signing in both languages shall not be brought into precedent, nor in any way operate to the prejudice of either party.

Done in triplicate at the city of Washington on the first day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and the fifty-second of the Independence of the United States of America.

[L. S.] H. CLAY.
[L. S.] LUDWIG NIEDERSTETTER.

ticles ci-dessus, tant en françois qu'en anglois, et y ont apposé leurs sceaux; déclarant, toutefois, que la signature dans ces deux langues, ne doit pas, par la suite, être citée comme example, ni, en aucune manière, porter préjudice aux Parties Contractantes.

Fait par triplicata en la Cité de Washington, le Premier Mai, l'An de Grâce Mil huit cent vingt-huit, et le cinquante deuxieme de l'Indépendance des Etats Unis d'Amérique.

[L. S.] LUDWIG NIEDERSTETTER.
[L. S.] H. CLAY,

Decisions of Federal Courts

Opinions of Attorneys General

Neutrality Proclamation of 1870

Decisions of Federal Courts

THE BARK *ELWINE KREPLIN*[1]

Seamen's Wages.—Desertion.—Imprisonment on Shore.—Consul.—Treaty With Prussia.—Jurisdiction.—Parties.—Practice.—Minor.—Executive Recognition.

A Prussian bark, with a crew whose term of service had not expired, was laid up at Staten Island, on account of the war between Prussia and France. A difficulty arose between the captain and the crew, and they demanded leave to go and see the consul. This the captain refused to allow, but agreed that one of them, named L., might go. They insisted that they would all go, and the captain went ashore to get the aid of the police. After he had gone, the crew informed the mate that they were going to see the consul, and went ashore, without serious objection from the mate. The captain, returning, was told by the mate that the men had gone ashore, and high words passed between them, which resulted in the mate's saying that he would go too, and he went ashore, without objection from the captain. The captain, with a police officer, overtook the crew, and all hands went before a police justice, where the captain made a complaint against the mate and the crew for mutiny and desertion. The justice informed the captain that he had no jurisdiction, but he directed a policeman to take the men into custody, and they were locked up. The captain then went before the Prussian consul, and made complaint, requesting that the crew be punished, and that they be kept in custody preliminarily, and stating that he could not receive the mate on board again. The consul then issued a requisition to a commissioner of the Circuit Court of the United States, stating that the men had deserted, and asking for a warrant to arrest the men, and, "if said charge be true," that they be detained until there should be an opportunity to send them back. The requisition the captain took to the police justice, who thereupon, without examination, committed all the men to the county jail, where they lay for ten days. On the direction of the consul, they were then released, and came to the consul's office, where they were advised to go to the ship, and ask the captain for their wages. Some of them went, and the captain agreed to meet the crew at the consul's office next day. He came there, but the parties failed to meet each other, and thereafter the seamen executed assignments of their wages to the mate,

---

[1] 4 Benedict, 413; 8 *Federal Cases,* 592 (Case 4427), December, 1870.

This case was reversed by the Circuit Court, on the ground that this court was prohibited, under the treaty with Prussia, from exercising jurisdiction. An application was made to the Supreme Court for a *mandamus,* to compel the Circuit Court to pass upon the merits, but was denied. *Post,* pp. 74 and 82.

but without consideration, and he filed this libel against the vessel, to recover the wages of all. The captain was part owner of the ship. He defended the suit, and claimed that the men had forfeited their wages by desertion; that they had agreed in the articles not to bring the suit; and that the court, under the treaty between the United States and Prussia, had no jurisdiction.

Held, That, as to the mate and L., there could be no pretense of desertion, for they left the vessel with the captain's consent;

That, as the other seamen only left the ship, without taking their clothes, to go and see the consul, the charge of desertion was not made out against them;

That the conduct of the captain, in imprisoning the men, was unlawful, and sufficient to dissolve the contract of the mariners;

That no law permits the imprisonment of deserters in our jails, except on proof of the facts before a competent tribunal;

That the men were not prevented from bringing this suit by the clause in the article referring to that provision of the German mercantile law, that "the seaman is not allowed to sue the master in a foreign port," because this is not a suit against the master, and the master having, by his unlawful conduct, absolved the men from their agreement, had absolved them from this portion of it with the rest;

That the clause in the treaty between the United States and Prussia, that "the consuls, vice-consuls, and commercial agents shall have the right, as such, to act as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committted to their charge, without the interference of the local authorities, unless, etc., etc.," was not sufficient to oust this court of its jurisdiction over this controversy.

Whether this clause has any application to suits *in rem—quære.*

That the Prussian consul had not acted in this matter as judge or arbitrator, which words must be taken in their ordinary sense, implying investigation of facts upon evidence, the exercise of judgment as to their effect, and a determination thereon;

That the consul is not a court, and neither his record nor his testimony is conclusive on this court;

That, as the consul, though really appointed as consul of the North German Union, was recognized by the executive department as consul of Prussia by virtue of such appointment, the action of the executive was binding on the court, and he must be held to be the Prussian consul;

That the seamen might file a petition to be now made colibellants, and on such petition being filed, and the cancellation of their assignments to the mate, they would be entitled to decrees for their wages.

In admiralty, minors are allowed to sue for wages in their own names.

BENEDICT, District Judge.

. . . . . .

Again, it is said that this is a Prussian vessel, and therefore the court is without jurisdiction in the premises by reason of the treaty between the United States and Prussia, ratified in 1828 (*U. S. Stat. L.,*

vol. 8, p. 382).[1] This position, which has been urged upon my consideration with earnestness and ability, has received my careful consideration. The provision of the treaty is as follows: "The consuls, vice-consuls and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said consuls, vice-consuls or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country."

In considering the effect of this treaty in the present case, I remark first, that its language does not precisely cover an action *in rem* like the present. Such an action is more than a mere difference between the master and the crew. It involves the question of lien upon the ship and her condemnation and sale to pay the same. In the absence of any express words, it is hard to infer that it was intended to confer upon consuls and vice-consuls, the power to direct a condemnation and sale of a ship—a proceeding which brings up, for determination, many questions besides those relating to seamen. Moreover, the statute of August 8, 1846,[2] which was passed to render effective this provision of this treaty, confers upon the Commissioners of the Circuit Court full power, authority and jurisdiction to carry into effect the award, arbitration or decree of the consul, and for that purpose to issue remedial process, mesne and final, and to enforce obedience thereto by imprisonment. It certainly can not be supposed that it was the intention to give to the Commissioners of the Circuit Court power to make a decree *in rem,* and direct the sale of a ship. This position, that the treaty is not applicable to the present case because it is a proceeding *in rem,* which did not strike me with much force upon the argument, has gained strength in my mind by reflection, and I confess that I am now inclined to the opinion that it is well taken; but I do not intend to rest my determination upon it. Nor do I discuss the position that the treaty was not intended to apply to any difference, except personal

[1] *Ante,* p. 50.
[2] *U. S. Statutes at Large,* vol. 9, p. 78.

differences, between the master and the seamen alone, such as assaults and the like, and does not cover differences as to wages, to which the owners as well as the ship are always real parties.

But I pass on to consider whether the effect of this treaty is to prevent the Courts of Admiralty of the United States from taking cognizance of any action brought by seamen to recover wages earned by them on board of a Prussian vessel. At the outset, it appears strange to hear it contended that the jurisdiction of the District Courts of the United States is thus to be limited, because of an agreement arrived at between Prussia and our Government, as to the jurisdiction of our own courts. Courts are created and their jurisdiction fixed by the law-making power; and the extent of their jurisdiction does not appear to be a fit subject of an agreement with a foreign Power. If, in any case, the powers exercised by the courts become a subject of discussion between our Government and a foreign nation, and any limitation of the jurisdiction, already conferred by law, be found to be desirable, the natural, if not the only way of accomplishing such a result would be by the action of the law-making power, instead of the treaty-making power. It appears reasonable, therefore, at least to require that an intention to accomplish such a result by a treaty, should be manifested by express words. The treaty under consideration contains no such definite provision. It simply declares that the consuls shall have the right to sit as judges and arbitrators in certain cases, without the interference of the local authorities, which is a very different thing from saying that the courts of the United States shall not have jurisdiction in such cases. Furthermore, the law-making power established the District Courts of the United States and the jurisdiction thereof, and gave to them, in civil cases of admiralty and maritime jurisdiction, all the judicial power vested in the national Government by the Constitution; and it is not to be lightly supposed that the President, acting with the advice of the Senate as the treaty-making power, has undertaken to repeal, *pro tanto*, an existing law relating to the jurisdiction of the courts, and to remove from the jurisdiction of the District Courts certain classes of actions, and that by reason of their subject-matter, for the provision in this treaty is not confined by its language to Prussian subjects, but applies to all seamen on Prussian vessels without regard to their nationality. It seems to me that no such intention should be imputed to the treaty, if any other can be discerned—and another, and a reasonable intention can be dis-

cerned when we consider, in connection with the treaty, the well-known practice of maritime courts in respect to actions brought by seamen to recover wages earned on foreign vessels. Such actions, Courts of Admiralty have long been accustomed to entertain, or to decline, in their discretion. Ordinarily, in the exercise of a sound discretion, they have refused to entertain such actions, when the consul of the foreign Power shows reasonable grounds for such declination, and his willingness to determine the matter in controversy. (*The Nina,* W. & B. Ad. 180, n.)

Having this practice in view it may be well inferred, from the language used in this treaty, that the object of the provision in question was to insure, so far as possible, without a repeal of the existing law, a declination of such actions by the courts in all cases where the consul has acted, and perhaps also where he expresses a willingness to act, as judge or arbitrator between the parties—thus giving to the foreign nation the guarantee of this nation for the continued exercise, by the courts, of that sound discretion which has ordinarily been exercised, and committing the nation to answer any demand which might arise from any omission by its courts to exercise such a discretion in this class of cases. Such an effect given to the treaty appears to my mind to be reasonable and sufficient to accomplish all that was intended. To hold that the treaty repeals *pro tanto* the act establishing the District Courts, and ousts them of all jurisdiction in this class of cases, would permit consuls to refuse to act, and at the same time withhold from seamen—and American citizens, it may be—all right of resort to the courts of the land. It would give opportunity for great frauds, and open a wide door for the oppression of a class of men entitled by the maritime law, above all others, to the protection of maritime courts. Of the use which would be made of such a construction of the treaty, the present attempt, in violation of all law, to appropriate some $1,100 of the earnings of these men, is not a bad illustration.

Under the view of the treaty above indicated, I am thus brought to consider whether the evidence sustains the averment, that the consul general of Prussia has already cognizance as a judge or arbitrator of the demand of these seamen, and makes out a case where, for that reason, this court should decline to entertain the action.

The words "judge and arbitrator," used in the treaty, must be taken in their ordinary significance. They imply investigation of the

facts upon evidence, the exercise of judgment as to the effect to be given thereto and a determination therefrom. And the use of these words indicate an intention not to deprive the seamen of a full and fair hearing of their cause and a decision thereof. If such a hearing had been given these men by the consul, the case would have been different. But here nothing has been done which can in any fair sense be called a hearing of the cause. The consul has not even gone through the form of sitting as judge or arbitrator in respect to the demands of these men. He examined no witnesses, he did not bring the parties before him, and he made no definite determination whatever. The men say that he refused to hear their story at all. The mate swears that he demanded to see the captain's charge against him, and he was refused. The vice-consul denies this, and says that he did listen to the men, and because they admitted themselves deserters, there was nothing to do but to tell them that they had forfeited their wages, which he did. But he can not say what persons admitted having deserted, and on cross-examination he shows that the admission was simply an admission by some, he does not know whom, of having left the vessel without leave. He admits having urged the men to go and see the captain, and expressed confidence that if they spoke civil the master would pay them their wages, which appears to be inconsistent with the idea that he had passed on the demand and adjudged the men not entitled to any wages whatever.

The consul is not a court, and neither his record nor his testimony is conclusive on this court. He can not shut his door in the face of parties and then, by declaring that he has adjudicated upon the demand, cut them off from a resort to the courts. Before he can call upon the courts to decline to entertain the action, he must show that he has given or is willing to give, to the seamen that hearing which the treaty intends they should have. Here the vice-consul himself testifies, "No adjudication was made in writing—a memorandum only was made. It was noted on the protocol as follows: 'A requisition has been made and given to the captain to be given to the court.'" The making such an entry is not sitting as judge or arbitrator on the present demand. To hold, on such proof, that the vice-consul has acted as judge or as arbitrator in respect to this demand, would countenance a mode of procedure which I should be sorry to see obtain. My conclusion, therefore, is that there has been no such examination and adjudication of the matter in hand by the consul as the courts require and the treaty intends to secure.

In the absence then of any legal limitation of the jurisdiction of the court by the treaty, and in the absence of any proof of such action on the part of the consul as should call upon the court to decline to entertain the action, I deem it my duty to proceed to render a decree—and I do this the more willingly because the master of this vessel is half owner of her, and is here present, where also the seamen are—and because the ship is laid up here by reason of war, nor can it be told when, if ever, she will return to her home. It is a vain thing, therefore, to say to these sailors, who, although having some $1,100 of wages due, and unpaid, are left paupers, that they must go to Prussia, and there await the return of the ship in order to enforce their demand. If they can not now maintain this action, they are practically deprived of all remedy, and thrown upon this community penniless. Against such a result my sense of justice revolts, and I am unwilling to believe that it is compelled by the law. I, therefore, without hesitation, pronounce in this case the decree which the maritime law, applied to the facts, requires, and condemn the vessel to pay the wages of the men.

In considering this case thus far, I have treated the action of the vice-consul as equivalent to that of the consul, and have so spoken of it. In point of fact, Dr. Roesing, the consul general who signed the requisition, which is the only official act proved, aside from the memorandum on the protocol, never saw either the master or the men, the vice-consul acting for him in everything, except signing the requisition. I have also spoken of the consul as the consul of Prussia, and have considered him to be the official referred to in the treaty with Prussia.

The point has been taken that the proofs show Dr. Roesing to be consul general of the North German Union; that there are now no consuls of Prussia, nor any similar treaty with the North German Union. But it appears from the law, proved, that the consul of the North German Union is the consul of each power comprehended in the Union, which is a confederation rather than a Union. Besides, the executive department recognizes Dr. Roesing as the consul of Prussia, by virtue of his appointment as consul general of the North German Union, and the courts are bound by the action of the executive in such a matter, the question being political, and not judicial.

There remains to allude to the phase of the case which is presented by the fact that the libel is filed by Newman, the mate, to recover his own wages, and also the wages of the other men, as the assignee of their demands. So far I have treated the case as if all the men were parties libellant.

The evidence shows the execution of a formal assignment to the mate of the claims of the other men, but it also appears that the assignment was without consideration, and that the men all expect to receive whatever may be recovered as their wages. This mode of procedure to save multiplicity of suits seems to have been adopted in ignorance of the rule of the admiralty, which enables several seamen to join in one action; and the mate, upon the trial, filed a consent that the other men be now joined as colibellants, and receive in their own persons whatever might be awarded for their claims. Upon such a consent and such facts, I deem it competent to permit all the seamen to join in the action, upon petition to be made colibellants, and, on showing the cancellation of their assignments to the mate, to take a decree in their own names for the wages found due them. Two of them are minors, it is true, but, in the admiralty, minors who are mariners are permitted to sue for their wages in their own names. All seamen are in a certain sense treated as minors in maritime courts.

In accordance with these views, let a decree be entered in favor of the mate, for his wages earned in the services of this vessel, and still unpaid, with a reference to ascertain the amount, and let similar decrees be made in favor of the seamen, upon the filing of their petition, and showing the cancellation of their assignments to the mate.

THE *ELWINE KREPLIN*[2]

CONSTITUTIONAL LAW—EFFECT OF EXPRESS PROVISIONS OF FOREIGN TREATY UPON JURISDICTION OF LOCAL COURTS

Article 10 of the treaty between the United States and the King of Prussia, of May 1, 1828 (8 Stat. 378, 382), provides, that the consuls, vice-consuls and commercial agents of each party "shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities," subject to the right of the contending parties "to resort, on their return, to the judicial authority of their country," and to the right of the consuls, vice-consuls or commercial agents to require the assistance of the local authorities, "to cause their decisions to be carried into effect or supported." The crew of a Prussian vessel sued her *in rem,* in admiralty, in the District Court, to recover wages alleged

[2] 9 Blatchford, 438; 8 Federal Cases, 588; Circuit Court, Eastern District of New York, February 23, 1872; reversing the *Elwine Kreplin, ante,* p. 67.

to be due to them. The master of the vessel answered, denying the debt, invoking the protection of said treaty, denying the jurisdiction of the court, and averring that the claim for wages had already been adjudicated by the Prussian consul at New York. The consul also protested formally to the court against the exercise of its jurisdiction. The case was tried in the district court, and it appeared that the consul had adjudicated on the claim for wages. The district court decreed in favor of the libellants: *Held,* that the district court had no jurisdiction of the case.

WOODRUFF, Circuit Judge. By the tenth article, of the treaty made by the United States with the King of Prussia, on the 1st of May, 1828 (8 *U. S. Stat. L.,* vol. 8, pp. 378, 382),[1] it is provided, that "the consuls, vice-consuls, and commercial agents,"—which each of the parties to the treaty is declared entitled to have in the ports of the other—"shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities. . . . It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country." To this general rule there is a qualification: "Unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance" (the assistance of the local authorities), "to cause their decisions to be carried into effect or supported." This treaty is, by the Constitution of the United States, the law of the land, and the Courts of Justice are bound to observe it. When a case arises which is within this provision of the treaty, jurisdiction thereof belongs to the consul, vice-consul or commercial agent of the nation whose interests are committed to his charge, and with the exercise of that jurisdiction the local tribunals are not at liberty to interfere, unless such consul, vice-consul, or commercial agent requires their assistance, to cause their decision to be carried into effect or supported.

In the present case, the mate and several of the crew of the barque *Elwine Kreplin* prosecuted their libels against the vessel, in the district court, for the recovery of wages alleged to be due to them, which the master of the vessel denied to be due, upon various grounds·

[1] *Ante,* pp. 50, 56.

and the vessel was attached to answer. The master of the barque, intervening for the interest of the owner, sets up, in his answer, various grounds of defence to the claim, some of which arise under the laws of Prussia; and, especially, he invokes the protection of the treaty above-mentioned, and denies the jurisdiction of the district court, alleging, moreover, that the matter in difference—the claim of the libellants for wages—has already, in fact, been adjudicated by the Prussian consul at the port of New York. Before the cause was tried in the District Court, the consul general of the North German Union presented to the District Court his formal protest against the exercise of jurisdiction by that court in the matter in difference. He invoked therein the treaty above referred to, and claimed exclusive jurisdiction of such matter in difference; and he also declared, that, before the filing of the libel, the said matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The barque is a Prussian vessel, the mate and crew are Prussian seamen, who shipped in Prussia, under and with express reference to the laws of Prussia, referred to in the shipping articles, and it should be assumed, that the treaty which binds this nation and its citizens and seamen, binds also Prussia and her subjects and seamen. The consul-general of the North German Union is commissioned by the King of Prussia, and, by certificate of the Secretary of State of the United States, under the seal of that department, it appears, that the executive department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign states composing that Union, "the same as if they had been commissioned by each one of such states." The Kingdom of Prussia is one of the states composing the North German Union. The treaty does not require that the consuls, vice-consuls, etc., should bear any specific name. It is sufficient, that the "interests" of Prussia "are committed to their charge," and quite sufficient, that the Government of the United States, by its executive, recognizes the consul as consul of the Kingdom of Prussia.

The discussion of the case at the hearing on the appeal, was, on the part of the libellants, very largely devoted to the merits of the claim for wages, upon principles applicable, it may be, to the subject, if no such treaty was in force, and under decisions of our courts in reference

to the rights and duties of seaman and master, the effect of the misconduct of either upon the obligation of the other, for the purpose of showing that the treatment of the libellants by the master exonerated them from their duty to serve according to the terms of the shipping articles, and also from all others of its stipulations, even from such as arise from the laws of Prussia forming a part of the terms, stipulations, and conditions which enter into the relation of the crew to the master and owners, and to the vessel. That discussion was very full, and was presented, in argument, with great ability, by the counsel for the libellants. With most of the rules of the law invoked by the counsel, when considered apart from and independent of any treaty stipulation, the claimants have no contest; and they are, no doubt, settled, by the cases cited. But the prior question of jurisdiction must be determined, before it is competent even to enquire into the merits of the libellants' claim to recover their wages.

In the first instance, it would seem clear, that a claim of the crew of a Prussian vessel to recover wages which the master of the vessel either denied to be due, or refused to pay, was, *par eminence,* a matter in difference between the captain and crew, which, by the very terms of the treaty, the Prussian consul or vice-consul had jurisdiction, as judge or arbitrator, to determine, "without the interference" of the courts of this country; and such jurisdiction, when it exists, is, by such terms as these, exclusive. It is, however, claimed, that the present cause is not at all embraced within the treaty, for the reason, that it is a proceeding *in rem,* to enforce a maritime lien upon the vessel itself, and not a difference between the captain and crew; and, also, because the Prussian consul has no power to conduct and carry into effect a proceeding *in rem* for the enforcement of such a lien.

The treaty can receive no such narrow and technical construction. The master is the representative, in this port, of the vessel, and of all the interests concerned therein. He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages. That arises between the crew and the master, either as master, or as the representative here of vessel and owners. It is precisely that which is in litigation in this case. The lien, and the proceeding *in rem* against the vessel, appertain to the remedy, and only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as incident to the right to the wages, the lien and its enforcement against the vessel follow. The District

Court can have no jurisdiction of the lien, nor jurisdiction to enforce it, if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty very much of its substance. The existence of any lien, and of any right to charge the vessel, is in difference here. To say, that the treaty gives the consul jurisdiction of claims against the master *in personam,* and does not include a claim to remove the vessel itself from his custody, as the owner *pro hac vice,* or as the representative of all the interests therein, that the voyage may be broken up, and the vessel sold for the wages of the crew, and that an effort, by judicial proceeding, to do this, is not included in the terms, a difference arising between captain and crew, seems to me to destroy the very substance of the stipulation, and defeat its obvious purpose, to confine both masters and crews of Prussia to the rights and obligations of the Prussian laws, and compel obedience to its mandates. And, be it observed, the treaty gives the same protection to, and requires the like obedience by, the masters and crews of vessels of the United States. It does not add to the legal reasons for this view, but, if a vessel of the United States were sold in a port in Prussia, to pay the wages of its crew, alleged by the master not to be payable, and in repudiation of any right of the United States consul at that port to act as judge or arbitrator upon that claim, it would, at least, stimulate our quickness of apprehension to discover, and would incline us to insist, that the treaty intended to protect our ship owners against the application of foreign laws, and the decisions of foreign courts, to our vessels and the relations of the master and crews thereof.

To the suggestion, that the consul has no power to enforce the maritime lien, and cause the vessel to be sold, to satisfy the wages, if he should find that wages are due and payable, it is sufficient to say, that the treaty has been deliberately entered into, and has become the law for both nations. Each preferred to employ its own officers. The power given to consuls to act as judge or arbitrator is not made final. The parties have the right of resort to the tribunals of their own country, without being concluded by the decisions of the consul. This was deemed a sufficient protection, and to afford, for the time being, a sufficient remedy to both master and crew; and it is not for this court to say, that the remedy here, by attachment of the vessel, will

be more efficient and useful, and, on that ground, to apply it. Besides, this court can not know that the remedy by resort to the vessel is not, if it exists, so regulated in Prussia, that it was intended that her seamen should not invoke against the vessel the remedies permitted by our laws, under the mode of administration and rules of decision by which our courts are governed. And, further, under the expressed exception, which permits resort to local tribunals by consuls, etc., who may require their assistance to cause their decisions to be carried into effect or supported, it is plausible, at least, to say, that, if the consul decide, on a difference between captain and crew, that wages are payable, the power of the court to attach and condemn the vessel for their payment may be invoked to support and give effect to such decision.

Again, it is said, that, in this case, the captain and crew were not confronted before the counsel, witnesses were not examined, no adjudication in writing was made, but the consul only orally declared his judgment of the matter in difference, after hearing the statement of the master and the statement of the libellants, and then declared that he had nothing further to do therein. The proceeding does not, it is true, conform to our ideas of the requisites of a judicial proceeding; but, are the courts of this country to prescribe to the Prussian consul the forms and modes of proceeding which he must adopt when he acts as a judge or arbitrator between master and crew under this treaty? Must he follow the practice, and be governed by the rules, governing trials and arbitrations under our laws? Must our consuls in Prussia follow the rules and practice of the courts of that kingdom? If so, then the District Court here was sitting as a court of error, to review the judgment or award of the Prussian consul. What can this court say are the formal requisites of a Prussian arbitration? It is manifest, by the reservation of the right to resort to the judicial tribunals of the home country, without being concluded by the decision of the consul, that the proceeding before him as an arbitrator or judge was intended to be summary, and its conduct left very much in his discretion; and, especially, it is manifest, that the nations respectively intended to confide in their consul, and temporarily entrust to him the adjustment of differences between officer and crew of their vessel in the port of the other, and it was not intended that the courts of such other nation should sit in judgment upon the form or regularity, or the justice, of the acts of the consul, or interfere therewith in any manner. It was deemed safe and proper to leave to such consuls this

temporary administration of the interests of their seamen abroad, assured that they would act with fairness and integrity therein, but yet giving the right of full and final investigation and adjudication at home, where home laws, home remedies, and home modes of investigation could be resorted to. The District Court here not only passed upon the requisites of the proceeding as judicial, or as an arbitrament, but assumed to inquire into the details of the evidence, and the truth of the declared grounds upon which the vice-consul testified that he acted, and which he says were before him in the admissions of the crew—thus, in effect, reviewing the law and the facts which the consul made the basis of his decision.

It is claimed, that the consul did not act as judge or arbitrator to determine this case, and that, he not having taken jurisdiction, a proceeding in our courts is no interference in disregard of the treaty. It is by no means clear, that the attachment of the vessel, on the libel of the crew, is not, in itself, such an interference as precludes the action of the consul. But in this case, the argument disregards the clearly established fact, that the consul or his vice-consul (who is, in terms, included in the treaty, and whose acts in the matter the consul recognizes), did hear the parties respectively. On the statement of the case by the crew (who, whichsoever of them was the first speaker, had the opportunity to tell their story), he pronounced against them. On their own story, he decided that they had forfeited their wages, by the Prussian law, applied to their contract of shipment; and, afterwards, when this suit was commenced, he formally represents to the court, that he had already adjudicated the matter in difference, and claimed that his jurisdiction for that purpose is exclusive of the courts of this country. It was after such declaration of his decision to the crew, that he, knowing that the vessel was laid up, advised them to see the captain, and, by civil and conciliatory deportment, induce him to waive the forfeiture and pay the wages which had accrued. In the situation in which the vessel and her master then were, it is obvious, that, if the men had forfeited their wages (of which I here express no opinion), their acts had wrought no great harm, the captain had no present need of the services of so many, and many considerations might properly have moved him to pay their wages and let them go. The advice of the consul indicated that he thought the loss of their service was no inconvenience to the captain and, even if wrong theretofore, they had claims to his consideration, while destitute and in a

foreign country, which might and, perhaps, ought to induce him to pay their wages. This is all there is of the argument, that the consul himself regarded the crew as practically discharged.

I do not propose to examine the merits of the libellants' claim for wages. That they were, on the requisition of the consul, and without sufficient grounds therefor, held in prison as deserters, is most probable. That their departure from the vessel, and going ashore without leave, and against the will of the master (save as to one, who had his consent), is not desertion by our law, unless it was done without the intention to return, is, no doubt, true. That the master did not, in fact, consent to the discharge of any of them, is, I think, clear, while I think it in the highest degree probable, that, if this difficulty had not arisen, he would, in view of the laying up of the vessel, have consented to part with most of them.

I do not think it certain, that an imprisonment, on the requisition of the consul, though induced by a statement of the facts by the captain, operated to discharge the seamen from their articles, even though the imprisonment was not warranted by the facts. *Jordan* v. *Williams* [1 Curtis' C. R. R., 69, 83]. Nor is it certain that, under this treaty, and the act of March 2, 1829 (*U. S. Stat. L.,* vol. 4, p. 359), a state magistrate can have no jurisdiction to arrest and detain a seaman charged as a deserter. True, the laws of the United States may not make it the duty of a state judge to act; but it does not follow, that, if he is included in the law, his acts will be without authority. There are many powers conferred upon state magistrates by the laws of the United States, which, if executed, are valid. Whether such magistrate is bound to accept the authority and act upon it, is another question. The act of 1829, in determining the duty, confers the power on "any court, judge, justice, or other magistrate having competent power, to issue warrants" to arrest, etc. See Pars. Shipp. & Adm. 102; *Kentucky* v. *Dennison,* 24 How. [65 U. S.] 66, 107, 108. It is apparent, that the requisition was given to the master to be delivered to the justice at Staten Island, who, as the captain informed the consul, then detained the seamen; and if, as stated by counsel (though it does not appear as printed in the copy proofs handed to me), it was addressed to "any magistrate," etc., the power of the magistrate is not clearly wanting.

But all these and other questions go to the merits. They bear on the broad question, whether, under the terms of the shipping articles, and the Prussian rules contained in the navigation book, etc., the

seamen had a right to their wages. The effect of the stipulation not to sue in a foreign country, which appears to be one of those rules, also, and what amounts to a discharge from the contract, actual or constructive, are questions on the merits; and the sympathy, which the condition of these men, penniless in a foreign land, whether with or without fault on their part, must awaken in every mind susceptible of human emotion, strongly inclines to a condemnation of the conduct of the master in this matter.

But I am constrained to the conclusion, that the treaty required that this matter in difference should have been left where, I think, the treaty with Prussia leaves it—in the hands, and subject to the determination, of their own public officer. The necessary result is the dismissal of the libels.

EX PARTE NEWMAN[1]

Certain Prussian sailors libelled a Prussian vessel in New York in admiralty for wages, less in amount than $2,000. The master set up a provision in a treaty of the United States with Prussia, by which it was stipulated that the consuls of the respective countries should sit as judges in "differences between the crews and captains of vessels" belonging to their respective countries; and the consul of Prussia, coming into the District Court, protested against the District Court's taking jurisdiction. The District Court, however, did take jurisdiction, and decreed $712 to the sailors. On appeal the Circuit Court reversed the decree, and dismissed the libel because of the consul's exclusive jurisdiction. *Held,* that mandamus would not lie to the Circuit judge to compel him to entertain jurisdiction of the cause on appeal, and to hear and decide the same on the merits thereof; and that this conclusion of this court was not to be altered by the fact that owing to the sum in controversy being less than $2,000, no appeal or writ of error from the Circuit Court to this court existed.

PETITION for writ of mandamus to the United States Circuit judge for the Eastern District of New York; the case being thus:

The Constitution ordains[2] that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction."

---

[1] 14 Wallace, 152; December Term, 1871.
[2] Article 3, § 2.

The tenth article of the treaty of the United States with the King of Prussia, made May 1st, 1828,[1] contains this provision:

> The consuls, vice-consuls, and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

"All treaties made, or which shall be made, under the authority of the United States," it is ordained by the Constitution of the United States,[2] "shall be the supreme law of the land."

With this treaty thus in force, the mate and several of the crew, all Prussians—who had shipped in Prussia on the Prussian bark *Elwine Kreplin,* under and with express reference, made in the shipping articles, to the laws of Prussia—got into a difficulty at New York with the master of the bark, who caused several of them to be arrested on charges of mutiny and desertion. They, on the other hand, took the case before the Prussian consul; denying all fault on their part, and claiming wages. The vice-consul heard the case, and decided that on their own showing they had forfeited their wages by the Prussian law applied to their contract of shipment. In addition to this he issued a requisition addressed to any marshal or magistrate of the United States, reciting that the master and crew had been guilty of desertion, and requiring such marshal or magistrate to take notice of their offence.

The mate and men now filed a libel in the District Court at New York against the bark for the recovery of wages (less than $2,000), which they alleged were due to them; and the bark was attached to answer. The master of the bark intervening for the interest of the owners answered, and set up various grounds of defense to the claim, some of which arose under the laws of Prussia, and especially he in-

[1] *U. S. Stat. L.,* vol. 8, p. 378 [*ante*, p. 50].
[2] Article 6.

voked the protection of the clause in the above quoted treaty between his country and this, and denied the jurisdiction of the District Court, alleging, moreover, that the matter in difference, the claim of the libellants for wages, had already in fact been adjudicated by the Prussian consul at the port of New York.

Before the cause was tried in the District Court, the consul general of the North German Union presented to that court his formal protest against the exercise of jurisdiction by that court in the matter in difference.[1] He invoked therein the same clause in the treaty, and claimed exclusive jurisdiction of such matters in difference; and declared also that, before the filing of the libel the matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The District Court proceeded notwithstanding to hear and adjudge the case; placing its right to do this, on the ground that the suit before *it* was a proceeding *in rem* to enforce a maritime lien upon the vessel itself, and not a "difference between the captain and crew;" and, also, because the Prussian consul had no power to conduct and carry into effect a proceeding *in rem* for the enforcement of such a lien, and had not in fact passed at all and could not pass upon any such case. Accordingly after a careful examination of the facts, that court decreed in favor of the libellants $712. The case then came by appeal to the Circuit Court. This latter court considered that the District Court had given to the treaty too narrow and technical a construction. The Circuit Court said:

> The master is the representative in this port of the vessel and of all the interests concerned therein. He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages. That arises between the crew and the master, either as master or as the representative here of vessel and owners. The lien and the proceeding *in rem* against the vessel appertain only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as in-

[1] The consul-general of the North German Union was commissioned by the King of Prussia, Prussia being one of the States composing the North German Union; and by certificate of the Secretary of State of the United States, under the seal of that department, it appeared that the Executive Department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign States composing that Union, "the same as if they had been commissioned by each one of such States."

> cident to the right to the wages, the lien and its enforcements against the vessel follow. The District Court can have no jurisdiction of the lien, nor jurisdiction to enforce it if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty much of its substance.

The Circuit Court adverted to and relied on the fact, that the Prussian consul had moreover actually heard the mate and sailors, and pronounced against them.

The Circuit Court accordingly, while it expressed on a general view of the merits its sympathy with the sailors, and a strong inclination to condemn the conduct of the master in the matter, yet was "constrained to the conclusion that the treaty required that the matter in difference should have been left where the treaty with Prussia leaves it, viz., in the hands and subject to the determination of their own public officer." The result was the dismissal of the libels by the Circuit Court for want of jurisdiction.

Thereupon Newman and the others, by their counsel, *Messrs. P. Phillips and D. McMahon,* filed a petition in *this* court for a writ of mandamus to the Circuit judge, commanding him "to entertain jurisdiction of the said cause on appeal, and to hear and decide the same on the merits thereof." The judge returned that the Circuit Court had entertained the appeal, and had heard counsel on all the questions raised in the case, and had decided it; and that the said court had decided that the matter in controversy was within the jurisdiction of the consul under the treaty, and that in the exercise of the jurisdiction so given him, he had decided the matter, and that therefore the court had dismissed the libel.

The question now was whether the mandamus should issue.

The reader will of course remember the provision in the 13th section of the Judiciary act, by which it is enacted:

> That the Supreme Court shall have power to issue writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed or persons holding office under the authority of the United States.

And also the provision of the 22d section, extended by an act of 1803 to appeals in admiralty, by which it is enacted:

> That final judgments and decrees in civil actions . . . in a Circuit Court . . . removed there by appeal from a District Court, where the matter in dispute exceeds the sum or value of $2,000, exclusive of costs, may be reexamined and reversed or affirmed in the Supreme Court.

. . . . . .

Mr. Justice CLIFFORD delivered the opinion of the court.

Attempt was made in the first place to prosecute the suit in the name of the mate for himself and as assignee of the crew, but the court before entering the decree suggested an amendment, and the crew were admitted as colibellants, which will render it unnecessary to make any further reference to that feature of the pleadings.

Proceedings *in rem* were instituted in the District Court against the bark *Elwine Kreplin,* by the mate, for himself and in behalf of the crew of the bark, on the twenty-fourth of August, 1870, in a case of subtraction of wages civil and maritime, and they allege in the libel, as amended, that the bark is a Prussian vessel, and that they are Prussian subjects, and that they were hired by the master and legally shipped on board the bark for a specified term of service, and that they continued well and truly to perform the duties they were shipped to fulfil, and that they were obedient to the lawful commands of the master, until they were discharged. They also set forth the date when they were shipped, the length of time they had served, the wages they were to receive, and the amount due and unpaid to them respectively for their services, and aver that the owners of the bark refuse to pay the amount.

Process was issued and served by the seizure of the bark, and the master appeared, as claimant, and filed an answer. He admits that the appellants shipped on board the bark at the place and in the capacities and for the wages alleged in the libel, but he avers that they signed the shipping articles and bound themselves by the rules, regulations, and directions of the shipping law and rules of navigation of the country to which the bark belonged, and he denies that they well and truly performed their duties, or that they were obedient to his lawful commands. On the contrary, he alleges that they, on the day they were discharged, were guilty of gross insubordination and mutinous conduct, that they resisted the lawful commands of the master, and

refused to obey the same, and interfered with him in the performance of his duty, and with force and threats prevented him from performing the same, and thereafter, on the same day, deserted from the vessel.

Apart from the merits he also set up the following defenses:

1. That the court had no jurisdiction of the matter contained in the libel, because the bark was a Prussian vessel, owned by Prussian citizens, and because the libellants were Prussian subjects belonging to the crew of the vessel, and were also citizens of that kingdom.

Support to that defense is derived from the tenth article of our treaty with that Government, which provides that consuls, vice-consuls, and commercial agents of the respective countries, in the ports of the other, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country, or the consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect.[1]

He set up that provision of the treaty, and prayed that he might have the same advantage of it as if the same was separately and formally pleaded to the libel.

2. That the libellants in signing the shipping articles bound themselves, under the penalty of a forfeiture of wages, not to sue or bring any action for any cause, against the vessel, or the master, or owners thereof, in any court or tribunal except in those of Prussia.

3. That the consul general of the North German Union, resident in the city of New York, which Government included Prussia and other sovereignties, heard and examined the questions of difference between the libellants and the claimant and adjudicated the same; that the libellants appeared before the court on the occasion and presented their claim to be discharged and their claim for wages, and that the consul, in his character as such, heard and examined their said claims and adjudged that the libellants should return to the vessel, and that no wages were due them or would be due them until they complied with the contract of shipment.

[1] *U. S. Stat. L.*, vol. 8, p. 382 [*ante*, p. 56].

Testimony was taken in the District Court, and the District Court entered a decree in favor of the libellants for the amount due them for their wages, and referred the cause to a commissioner to ascertain and report the amount. Subsequently he reported that the amount due to the libellants was seven hundred and forty-three dollars and forty-one cents. Exceptions were filed by the claimant, and the District Court upon further hearing reduced the amount to seven hundred and twelve dollars and thirty-two cents, and entered a final decree for that amount, with costs of suit. Thereupon the claimant appealed to the Circuit Court, and the record shows that the appeal was perfected, and that the cause was duly entered in that court.[1]

On the fifth of the last month the petition under consideration was filed in this court in behalf of the appellees in that suit, in which they represented that the cause appealed was fully argued before the Circuit Court on the same pleadings and proofs as those exhibited in the District Court, and that the Circuit judge reversed the decree of the District Court and dismissed the libel for want of jurisdiction in the District Court to hear and determine the controversy; that the Circuit judge declined to entertain the cause or to consider the same on the merits, and that no final decree on the appeal has been entered in the Circuit Court or signed by the Circuit judge.

His refusal to entertain jurisdiction and to hear and decide the merits of the case was placed, as they allege, upon the ground that the matter in difference, under the tenth article of the treaty, was within the exclusive cognizance of the consul, vice-consul, or commercial agent therein described, and in consequence thereof that the District Court was without any jurisdiction, which they contend is an error for the following reasons:

(1.) Because the treaty stipulation, if so construed, is unconstitutional and void.

(2.) Because that article of the treaty applies only to disputes between the masters and crews of vessels, and has no reference to suits *in rem* against the vessel.

(3.) Because the record in this case shows that the Prussian authorities refused to entertain jurisdiction of the controversy.

(4.) Because the treaty is with Prussia, and it appears that her Government has no consul, vice-consul, or commercial agent at that port.

---

[1] *Ante*, p. 74.

(5.) Because that the consul who acted in the case requested the District Court to take jurisdiction of the matter in difference.

Hearing was had on the day the petition was presented, and this court granted a rule requiring the Circuit judge to show cause on the day therein named why a peremptory writ of mandamus should not issue to him directing him to hear the appeal of the petitioners and decide the same on the merits. Due service of that rule was made, and the case now comes before the court upon the return of the judge to that rule. He returns, among other things not necessary to be reproduced, as follows: That the cause of the libellants proceeded to a decree in their favor in the District Court; that an appeal from that decree was taken in due form to the Circuit Court for that district; that the Circuit Court did not refuse to entertain the appeal nor did the Circuit Court refuse to decide the case on the appeal nor hold or decide that the Circuit Court had no jurisdiction to hear or decide the same, as required by the proofs or by the law. On the contrary, the Circuit Court did entertain the appeal, did hear the counsel of the parties fully on all the questions raised in the case, and did decide the same. But in making such decision the said court did hold and decide that the matter in controversy was within the jurisdiction of the consul, under the treaty, and that the consul, in the exercise of that jurisdiction, after hearing the parties, had decided the matter. Pursuant to those views the Circuit Court, as the return shows, did thereupon direct that the decree of the District Court be reversed, and that the libel of the petitioners be dismissed.

Power to issue writs of mandamus to any courts appointed under the authority of the United States was given to this court by the thirteenth section of the Judiciary Act, in cases warranted by the principles and usages of law.[1] When passed, the section also empowered the court to issue such writs, subject to the same conditions, to persons holding office under the United States, but this court, very early, decided that the latter provision was unconstitutional and void, as it assumed to enlarge the original jurisdiction of the court, which is defined by the Constitution.[2]

Applications for a mandamus to a subordinate court are warranted by the principles and usages of law in cases where the subordinate

[1] *U. S. Stat. L.*, vol. 1, p. 81.
[2] *Marbury* v. *Madison*, 1 Cranch, 175; *Ex parte Hoyt*, 18 Peters, 290.

court, having jurisdiction of a case, refuses to hear and decide the controversy, or where such a court, having heard the cause, refuses to render judgment or enter a decree in the case, but the principles and usages of law do not warrant the use of the writ to reexamine a judgment or decree of a subordinate court in any case, nor will the writ be issued to direct what judgment or decree such a court shall render in any pending case, nor will the writ be issued in any case if the party aggrieved may have a remedy by writ of error or appeal, as the only office of the writ when issued to a subordinate court is to direct the performance of a ministerial act or to command the court to act in a case where the court has jurisdiction and refuses to act, but the supervisory court will never prescribe what the decision of the subordinate court shall be, nor will the supervisory court interfere in any way to control the judgment or discretion of the subordinate court in disposing of the controversy.[1] Where a rule is laid, as in this case, on the judge of a subordinate court, he is ordered to show cause why the peremptory writ of mandamus shall not issue to him, commanding him to do some act which it is alleged he has power to do, and which it is his duty to do, and which he has improperly neglected and refused to do, as required by law. Due service of the rule being made the judge is required to make return to the charge contained in the rule, which he may do by denying the matters charged or by setting up new matter as an answer to the accusations of the relator, or he may elect to submit a motion to quash the rule or to demur to the accusative allegations. Matters charged in the rule and denied by the respondent must be proved by the relator, and matters alleged in avoidance of the charge made, if denied by the relator, must be proved by the respondent.[2] Motions to quash in such cases are addressed to the discretion of the court, but if the respondent demurs to the rule, or if the relator demurs to the return the party demurring admits everything in the rule or the return, as the case may be, which is well-pleaded, and if the relator elects to proceed to hearing on the return, without pleading to the same in any way, the matters alleged in the return must be taken to be true to the same extent as if the relator had demurred to

---

[1] *Insurance Co.* v. *Wilson,* 8 Peters, 302; *United States* v. *Peters,* 5 Church, 135; *Ex parte Bradstreet,* 7 Peters, 648; *Ex parte Many,* 14 Howard, 24; *United States* v. *Lawrence,* 3 Dallas, 42; *Commissioner* v. *Whitely,* 4 Wallace, 522; *Insurance Co.* v. *Adams,* 9 Peters, 602.

[2] Angell & Ames on Corporations, 9th ed. Sec. 727; *Cagger* v. *Supervisors,* 2 Abbott's Practice, N. S. 78.

the return.[1] Subordinate judicial tribunals, when the writ is addressed to them, are usually required to exercise some judicial function which it is alleged they have improperly neglected or refused to exercise, or to render judgment in some case when otherwise there would be a failure of justice from a delay or refusal to act, and the return must either deny the facts stated in the rule or alternative writ on which the claim of the relator is founded, or must state other facts sufficient in law to defeat the claim of the relator, and no doubt is entertained that both of those defenses may be set up in the same return, as in the case before the court.[2] Several defenses may be set up in the same return, and if any one of them be sufficient the return will be upheld.[3]

Evidently the District judge was inclined to adopt the proposition, advanced by the libellants, that the suit for wages, as it was prosecuted by a libel *in rem,* was not within the treaty stipulation, nor a controversy within the jurisdiction of the consul, but he did not place his decision upon that ground. He did, however, rule that the treaty did not have the effect to change the jurisdiction of the courts, except to require them to decline to hear matters in difference between the masters and crews of vessels in all cases where the consul had acted or perhaps was ready to act as judge or arbitrator in respect to such differences. Beyond doubt he assumed that to be the true construction of the treaty, and having settled that matter he proceeded to inquire whether the consul had adjudicated the pending controversy, or whether the evidence showed that he was ready to do so, and having answered those inquiries in the negative he then proceeded to examine the pleadings and proofs, and came to the conclusion in the case which is expressed in the decree from which the appeal was taken to the Circuit Court.

All of those matters were again fully argued in the Circuit Court, and the Circuit judge decided to reverse the decree of the District Court upon the following grounds: (1.) That the Prussian consul,

---

[1] Tapping on Mandamus, 347; Moses on Mandamus, 210; *Com. Bank* v. *Commissioners,* 10 Wendell, 25; *Ryan* v. *Russel,* 1 Abbott's Practice, N. S. 230; *Hanahan* v. *Board of Police,* 26 New York, 316; *Middleton* v. *Commissioners,* 37 Pennsylvania State, 245; 3 Stephens's *Nisi Prius,* 2326; 6 Bacon's Abridgment, ed. 1856, 447.

[2] *Springfield* v. *Harnden,* 10 Pickering, 59; *People* v. *Commissioners,* 11 Howard's Practice, 89; *People* v. *Champion,* 16 Johnson, 61.

[3] *Wright* v. *Fawcett,* 4 Burrow, 2041; Moses on Mandamus, 214.

under the treaty, had jurisdiction of the subject-matter involved in the suit in the District Court. (2.) That the jurisdiction of the consul under the treaty was exclusive. (3.) That the proofs showed that the consul heard and adjudicated the matter involved in the suit appealed to the Circuit Court, and that the libellants were bound by that adjudication.

Such questions were undoubtedly raised in the pleadings, and it is equally certain that they were decided by the District Court in favor of the libellants. Raised as they were by the pleadings, it can not be successfully denied that the same questions were also presented in the Circuit Court, and in view of the return it must be conceded that they were decided in the latter court in favor of the respondent. Support to that proposition is also found in the opinion of the Circuit judge, and in the order which he made in the case. Suffice it, however, to say, it so appears in the return before the court, and this court is of the opinion that the return, in the existing state of the proceedings, is conclusive.

Confessedly the petitioners are without remedy by appeal or writ of error, as the sum or value in controversy is less than the amount required to give that right, and it is insisted that they ought on that account to have the remedy sought by their petition. Mandamus will not lie, it is true, where the party may have an appeal or writ of error, but it is equally true that it will not lie in many other cases where the party is without remedy by appeal or writ of error. Such remedies are not given save in patent and revenue cases, except when the sum or value exceeds two thousand dollars, but the writ of mandamus will not lie in any case to a subordinate court unless it appears that the court of which complaint is made refused to act in respect to a matter within the jurisdiction of the court and where it is the duty of the court to act in the premises.

Admiralty Courts, it is said, will not take jurisdiction in such a case except where it is manifestly necessary to do so to prevent a failure of justice, but the better opinion is that, independent of treaty stipulation, there is no constitutional or legal impediment to the exercise of jurisdiction in such a case. Such courts may, if they see fit, take jurisdiction in such a case, but they will not do so as a general rule without the consent of the representative of the country to which the vessel belongs, where it is practicable that the representative should be consulted. His consent, however, is not a condition of jurisdiction, but

is regarded as a material fact to aid the court in determining the question of discretion, whether jurisdiction in the case ought or ought not to be exercised.[1]

. . . . . .

Viewed in the light of the return, the court is of the opinion that the rule must be discharged and the

PETITION DENIED.

UNITED STATES v. DIEKELMAN[2]

1. Unless treaty stipulations provide otherwise, a merchant vessel of one country visiting the ports of another for the purpose of trade, is, so long as she remains, subject to the laws which govern them.
2. Where, in time of war, a foreign vessel, availing herself of a proclamation of the President of May 12, 1862, entered the port of New Orleans, the blockade of which was not removed, but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by such proclamation that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law.
3. As New Orleans was then governed by martial law, a subject of a foreign Power entering that port with his vessel under the special license of the proclamation became entitled to the same rights and privileges accorded under the same circumstances to loyal citizens of the United States. Restrictions placed upon them operated equally upon him.
4. Money, silver-plate, and bullion, when destined for hostile use or for the purchase of hostile supplies, are contraband of war. In this case, the determination of the question whether such articles, part of the outward-bound cargo of the vessel, were contraband, devolved upon the commanding general at New Orleans. Believing them to be so, he, in discharge of his duty, ordered them to be removed from her, and her clearance to be withheld until his order should be complied with.
5. Where the detention of the vessel in port was caused by her resistance to the orders of the properly constituted authorities whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed,—*Held,* that her owner, a subject of Prussia, is not "entitled to any damages" against the United States, under the law of nations or the treaty with that power. *U. S. Stat. L.,* vol. 8, p. 384.

---

[1] 2 Persons on Shipping, 224; *Lynch* v. *Crowder,* 2 Law Reporter, N. S. 355; *Thompson* v. *Nanny,* Bee, 217; *The Bee,* Ware, 332; *The Infanta,* Abbott's Admiralty, 263.

[2] 92 U. S. Reports, 520; October term, 1875.

Appeal from the Court of Claims.

Mr. Assistant Attorney General Edwin B. Smith for the appellant.

Mr. J. D. McPherson, contra.

Mr. Chief Justice Waite delivered the opinion of the court.

This suit was brought in the Court of Claims under the authority of a joint resolution of both Houses of Congress, passed May 4, 1870, as follows:—

> That the claim of E. Diekelman, a subject of the King of Prussia, for damages for an alleged detention of the ship *Essex* by the military authorities of the United States at New Orleans, in the month of September, 1862, be and is hereby referred to the Court of Claims for its decision in accordance with law, and to award such damages as may be just in the premises, if he may be found to be entitled to any damages.

Before this resolution was passed, the matter of the claim had been the subject of diplomatic correspondence between the Governments of the United States and Prussia.

The following article, originally adopted in the treaty of peace between the United States and Prussia, concluded July 11, 1799 (*U. S. Stat. L.*, vol. 8, p. 168),[1] and revived by the treaty concluded May 1, 1828 (*U. S. Stat. L.*, vol. 8, p. 384),[2] was in force when the acts complained of occurred, to wit:—

> Art. 13. And in the same case, if one of the contracting parties, being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandise of contraband, such as arms, ammunition and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband so as to induce confiscation or condemnation, and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding; paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores

[1] *Ante*, p. 35.
[2] *Ante*, p. 59.

> so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not, in that case, be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

When the *Essex* visited New Orleans, the United States were engaged in the war of the rebellion. The port of that city was, at the very commencement of the war, placed under blockade, and closed against trade and commercial intercourse; but, on the 12th of May, 1862, the President, having become satisfied that the blockade might "be safely relaxed with advantage to the interests of commerce," issued his proclamation, to the effect that from and after June 1 "commercial intercourse, . . . except as to persons, things, and information contraband of war," might "be carried on subject to the laws of the United States, and to the limitations, and in pursuance of the regulations . . . prescribed by the Secretary of the Treasury," and appended to the proclamation. These regulations, so far as they are applicable to the present case, are as follows:

> 1. To vessels clearing from foreign ports and destined to . . . New Orleans, . . . licenses will be granted by consuls of the United States upon satisfactory evidence that the vessels so licensed will convey no persons, property, or information contraband of war either to or from the said ports; which licenses shall be exhibited to the collector of the port to which said vessels may be respectively bound, immediately on arrival, and, if required, to any officer in charge of the blockade; and on leaving either of said ports every vessel will be required to have a clearance from the collector of the customs according to law, showing no violation of the conditions of the license. *U. S. Stat. L.*, vol. 12, p. 1264.

The *Essex* sailed from Liverpool for New Orleans June 19, 1862, and arrived August 24. New Orleans was then in possession of the military forces of the United States, with General Butler in command. The city was practically in a state of siege by land, but open by sea, and was under martial law.

The commanding general was expressly enjoined by the Government of the United States to take measures that no supplies went out

of the port which could afford aid to the rebellion; and, pursuant to this injunction, he issued orders in respect to the exportation of money, goods, or property, on account of any person known to be friendly to the Confederacy, and directed the custom-house officers to inform him whenever an attempt was made to send any thing out which might be the subject of investigation in that behalf.

In the early part of September, 1862, General Butler, being still in command, was informed that a large quantity of clothing had been bought in Belgium on account of the Confederate Government, and was lying at Matamoras awaiting delivery, because that Government had failed to get the means they expected from New Orleans to pay for it; and that another shipment, amounting to a half million more, was delayed in Belgium from coming forward, because of the non-payment of the first shipment. He was also informed that it was expected the first payment would go forward through the agency of some foreign consuls; and this information afterwards proved to be correct.

He was also informed early in September by the custom-house officers, that large quantities of silver-plate and bullion were being shipped on the *Essex,* then loading for a foreign port, by persons, one of whom had declared himself an enemy of the United States, and none of whom would enroll themselves as friends; and he thereupon gave directions that the specified articles should be detained, and their exportation not allowed until further orders.

On the 15th September, the loading of the vessel having been completed, the master applied to the collector of the port for his clearance, which was refused in consequence of the orders of General Butler, but without any reasons being assigned by the collector. The next day, he was informed, however, that his ship would not be cleared unless certain specified articles which she had on board were taken out and landed. Much correspondence ensued between General Butler and the Prussian consul at New Orleans in reference to the clearance, in which it was distinctly stated by General Butler that the clearance would not be granted until the specified goods were landed, and that it would be granted as soon as this should be done. Almost daily interviews took place between the master of the vessel and the collector, in which the same statements were made by the collector. The master refused to land the cargo, except upon the return of his bills of lading. Some of these bills were returned, and

the property surrendered to the shipper. In another case, the shipper gave an order upon the master for his goods, and they were taken away by force. At a very early stage in the proceeding, the master and the Prussian consul were informed that the objection to the shipment of the articles complained of was that they were contraband.

A part only of the goods having been taken out of the vessel, a clearance was granted her on the 6th of October, and she was permitted to leave the port and commence her voyage.

Upon this state of facts, the Court of Claims gave judgment for Diekelman, from which the United States took an appeal.

One nation treats with the citizens of another only through their Government. A sovereign cannot be sued in his own courts without his consent. His own dignity, as well as the dignity of the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty, except in performance of his obligations, by treaty or otherwise, voluntarily assumed. Hence, a citizen of one nation wronged by the conduct of another nation, must seek redress through his own Government.

His sovereign must assume the responsibility of presenting his claim, or it need not be considered. If this responsibility is assumed, the claim may be prosecuted as one nation proceeds against another, not by suit in the courts as of right, but by diplomacy, or, if need be, by war. It rests with the sovereign against whom the demand is made to determine for himself what he will do in respect to it. He may pay or reject it; he may submit to arbitration, open his own courts to suit, or consent to be tried in the courts of another nation. All depends upon himself.

In this case, Diekelman, claiming to have been injured by the alleged wrongful conduct of the military forces of the United States, made his claim known to his Government. It was taken into consideration, and became the subject of diplomatic correspondence between the two nations. Subsequently, Congress, by joint resolution, referred the matter to the Court of Claims "for its decision according to law." The courts of the United States were thus opened to Diekelman for this proceeding. In this way the United States have submitted to the Court of Claims, and through that court upon appeal to us, the determination of the question of their legal liability under all the circumstances of this case for the payment of damages to a citizen of Prussia upon a claim originally presented by his sovereign

in his behalf. This requires us, as we think, to consider the rights of the claimant under the treaty between the two Governments, as well as under the general law of nations. For all the purposes of its decision, the case is to be treated as one in which the Government of Prussia is seeking to enforce the rights of one of its citizens against the United States in a suit at law, which the two Governments have agreed might be instituted for that purpose. We shall proceed upon that hypothesis.

. . . . . .

2. As to the treaty.

The vessel was in port when the detention occurred. She had not broken ground, and had not commenced her voyage. She came into the waters of the United States while an impending war was flagrant, under an agreement not to depart with contraband goods on board. The question is not whether she could have been stopped and detained after her voyage had been actually commenced, without compensation for the loss, but whether she could be kept from entering upon the voyage and detained by the United States within their own waters, held by force against a powerful rebellion, until she had complied with regulations adopted as a means of safety, and to the enforcement of which she had assented, in order to get there. In our opinion, no provision of the treaties in force between the two Governments interferes with the right of the United States, under the general law of nations, to withhold a custom-house clearance as a means of enforcing port regulations.

Art. 13 of the treaty of 1828 contemplates the establishment of blockades, and makes special provision for the government of the respective parties in case they exist. The vessels of one nation are bound to respect the blockades of the other. Clearly the United States had the right to exclude Prussian vessels in common with those of all other nations, from their ports altogether, by establishing and maintaining a blockade while subduing a domestic insurrection. The right to exclude altogether necessarily carries with it the right of admitting through an existing blockade upon conditions, and of enforcing in an appropriate manner the performance of the conditions after admission has been obtained. It will not be contended that a condition which prohibits the taking out of contraband goods

is unreasonable, or that its performance may not be enforced by refusing a clearance until it has been complied with. Neither, in the absence of treaty stipulations to the contrary, can it be considered unreasonable to require goods to be unloaded, if their contraband character is discovered after they have gone on board. In the existing treaties between the two Governments there is no such stipulations to the contrary. In the treaty of 1799, Art. 6 is as follows:

> That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed, or detained, it is agreed, that all examinations of goods, required by the laws, shall be made before they are laden on board the vessel, and that there shall be no examination after.

While other articles in the treaty of 1799 were revived and kept in force by that of 1828, this was not. The conclusion is irresistible, that the high contracting parties were unwilling to continue bound by such a stipulation, and, therefore, omitted it from their new arrangement. It would seem to follow, that, under the existing treaty, the power of search and detention for improper practices continued, in time of peace even, until the clearance had been actually perfected and the vessel had entered on her voyage. If this be the rule in peace, how much more important is it in war for the prevention of the use of friendly vessels to aid the enemy.

Art. 13 of the treaty of 1799, revived by that of 1828, evidently has reference to captures and detentions after a voyage has commenced, and not to detentions in port, to enforce port regulations. The vessel must be "stopped" in her voyage, not detained in port alone. There must be "captors;" and the vessel must be in a condition to be "carried into port" or detained from "proceeding" after she has been "stopped," before this article can become operative. Under its provisions the vessel "stopped" might "deliver out the goods supposed to be contraband of war," and avoid further "detention." In this case there was no detention upon a voyage, but a refusal to grant a clearance from the port that the voyage might be commenced. The vessel was required to "deliver out the goods supposed to be contraband" before she could move out of the port. Her detention was not under the authority of the treaty, but in consequence of her resistance of the orders of the properly constituted port authorities, whom she was bound to obey. She preferred detention

in port to a clearance on the conditions imposed. Clearly her case is not within the treaty. The United States, in detaining, used the right they had under the law of nations and their contract with the vessel, not one which, to use the language of the majority of the Court of Claims, they held under the treaty "by purchase" at a stipulated price.

As we view the case, the claimant is not "entitled to any damages" as against the United States, either under the treaty with Prussia or by the general law of nations.

The judgment of the Court of Claims is, therefore, reversed, and the cause remanded with directions to dismiss the petition.

NORTH GERMAN LLOYD S. S. CO. v. HEDDEN, COLLECTOR[1]

SAME v. MAGONE, COLLECTOR

(*Circuit Court, D. New Jersey.* May 21, 1890)

1. Customs Duties—Construction of Laws—Tonnage Tax.

   Act Cong. June 26, 1884, § 14, which levies a duty of 3 cents per ton on all vessels "from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Sandwich Islands, or Newfoundland," and a duty of 6 cents per ton on vessels from other foreign ports, does not entitle German vessels sailing from European ports to enter our ports on payment of a duty of 3 cents per ton, under the treaties of December 20, 1827, and May 1, 1828, which stipulate that the United States shall not grant any particular favor regarding commerce or navigation to any other foreign nation which shall not immediately become common to Germany, since the discrimination contained in said act is merely geographical, and the 3-cent rate applies to vessels of all nations coming from the privileged ports.

2. Treaties—Effect of Inconsistent Act of Congress.

   Where an act of Congress is in conflict with a prior treaty the act must control, since it is of equal force with the treaty and of later date.

3. Constitutional Law—Commissioner of Navigation.

   Act Cong. July 5, 1884, § 3, which makes final the decision of the commisioner of navigation on all questions "relating to the collection of tonnage tax, and to the refunding of such tax, when collected erroneously or illegally," is constitutional.

---

[1] 43 *Federal Reporter*, 17. See also the opinion of the Attorney General, *post*, p. 141, and the diplomatic correspondence, *post*, p. 151.

At Law.

Samuel F. Bigelow and *Henry C. Nevitt,* for plaintiff.

Howard W. Hayes, Asst. U. S. Dist. Atty., for defendants.

WALES, J. The plaintiff, a duly organized corporation under the laws of the Hanseatic Republic of Bremen, which is a part of the German empire, is the owner of a line of ocean steamships, plying regularly between the ports of Bremen and New York, and brings these actions, under section 2931, U. S. Rev. Stat., to recover the amount of certain tonnage dues, alleged to have been unlawfully collected from said ships during the period extending from June 26, 1884, to July 28, 1888, and while the defendants were successively collectors of customs at the last named port. The vessels cleared from Bremen for New York via Southampton, England, stopping at or near the latter place temporarily, to discharge cargo and passengers, and to take on board additional cargo, passengers, and mails. The consignees of the vessels paid the dues, in every instance, under protest, and the plaintiff appealed to the Secretary of the Treasury, and finally, at the suggestion of the latter officer and with the concurrence of the Department of Justice, brought these actions to determine the authority of the defendants. The right of the plaintiff to recover depends upon the following statement of the law and facts: Prior to the act of Congress of June 26, 1884, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade," tonnage tax was imposed upon German and all other vessels arriving in the United States from foreign ports, at the rate of 30 cents per ton per annum, and up to July 1st, of that year, it had been collected in a lump sum for a year at a time. But section 14 of the act of 1884 changed the rate and mode of collection as follows:

> That in lieu of the tax on tonnage of thirty cents per ton per annum, heretofore imposed by law, a duty of three cents per ton, not to exceed in the aggregate fifteen cents per ton in any one year, is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Sandwich Islands, or Newfoundland; and a duty of six cents per ton, not to exceed thirty cents per ton annum, is hereby imposed at each entry upon all vessels which shall be entered in the United States from any other foreign ports. *U. S. Stat. L.,* vol. 23, p. 57.

This section was amended by section 11 of the act of Congress of June 19, 1886, entitled "An act to abolish certain fees," etc. *U. S. Stat. L.*, vol 24, p. 81. The amendment consisted in adding the following words to those just quoted:

> Not, however, to include vessels in distress or not engaged in trade; provided, that the President of the United States shall suspend the collection of so much of the duty herein imposed on vessels entered from any foreign port as may be in excess of the tonnage and lighthouse dues, or other equivalent tax or taxes, imposed in said port on American vessels, by the Government of the foreign country in which such port is situated, and shall, upon the passage of this act, and from time to time thereafter as often as it may become necessary, by reason of changes in the laws of the foreign countries above mentioned, indicate by proclamation the ports to which such suspension shall apply, and the rate or rates of tonnage duty, if any, to be collected under such suspension: provided, further, that such proclamation shall exclude from the benefits of the suspension herein authorized, the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes, are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels; and sections 4223 and 4224 and so much of section 4219 of the U. S. Revised Statutes as conflict with this section are hereby repealed.

Section 4219, title 48, chap. 3, Rev. Stats., referred to in the foregoing sub-proviso, provides that "nothing in this section shall be deemed . . . to impair any rights . . . under the law and treaties of the United States relative to the duty of tonnage vessels." Section 4227 of the same title and chapter is in these words:

> Nothing contained in this title shall be deemed in any wise to impair any rights and privileges which have been or may be acquired by any foreign nation under the laws and treaties of the United States, relative to the duty on tonnage of vessels, or any other duty on vessels.

By Article 9 of the treaty of December 20, 1827, between the United States and the Hanseatic Republics, "the contracting parties . . . engage mutually not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party." Public Treaties, 400. Article 9 of the Prussian-American treaty of May 1, 1828, (Public Treaties,

656,) contains a like stipulation. These treaties have been held by both the American and German Governments to be valid for all Germany. On the 26th of January, 1888, the President, in virtue of the authority vested in him by section 11 of the act of June 19, 1886, issued his proclamation, wherein, after reciting that he had received satisfactory proof that no tonnage or lighthouse dues, or any equivalent tax or taxes whatever, are imposed upon American vessels entering the ports of the German Empire, either by the imperial Government or by the Government of the German maritime states, and that vessels belonging to the United States are not required, in German ports, to pay any fee or due of any kind or nature, or any import duty higher or other than is payable by German vessels or their cargoes, did "declare and proclaim that from and after the date of this my proclamation shall be suspended the collection of the whole of the duty of six cents per ton . . . upon vessels entered in the ports of the United States from any of the ports of the empire of Germany. . . . and the suspension hereby declared and proclaimed shall continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes shall be continued in the said ports of the empire of Germany, and no longer." The commissioner of navigation, in his circular letter No. 19, dated February 1, 1888, and approved by the Secretary of the Treasury, addressed to the collectors of customs and others, decided that the President's proclamation does not apply to vessels which entered before the date of the proclamation, and that only those German vessels "arriving directly from the ports of the German empire may be admitted under the proclamation without the payment of the dues therein mentioned." The commissioner of navigation claims authority to make this decision by virtue of section 3 of the act of Congress of July 5, 1884, entitled "An act to constitute a bureau of navigation in the Treasury Department," which reads as follows:

> That the commissioner of navigation shall be charged with the supervision of the laws relating to the admeasurement of vessels, and the assigning of signal letters thereto, and of designating their official number; and on all questions of interpretation, growing out of the execution of the laws relating to these subjects, and relating to the collection of tonnage tax, and to the refunding of such tax when collected erroneously or illegally, his decision shall be final.

The plaintiff's vessels were German vessels, and on the 19th day of June, 1886, and thereafter until now, the Government of Germany exacted no tonnage tax or taxes whatever on vessels of the United States arriving in German ports.

Upon this statement of the law and the facts, the plaintiff's counsel contend (1) that as to the dues collected between June 26, 1884, and June 19, 1886, the plaintiff's vessels should not have been charged more than the lower rate of tonnage tax fixed by the act of 1884, under the favored nation clause of the treaties, whereas the defendants charged six cents per ton; (2) that the dues collected after the passage of the act of June 19, 1886, and prior to the President's proclamation, were excessive, for the same reason; (3) that no tonnage tax whatever could be lawfully collected of the vessels of the plaintiff, after the passage of the act of June 19, 1886, because that act went into effect immediately, and without waiting for the President's proclamation; (4) that the act of July 5, 1884, in so far as it confers on the commissioner of navigation the power of deciding finally on all questions of interpretation, growing out of the execution of the laws relating to the collection of tonnage tax, and the refund of the same when illegally or erroneously collected, is unconstitutional and void.

As introductory to their argument, plaintiff's counsel referred to the policy of our Government in relation to the subject of navigation, which it is claimed has been from the beginning to establish entire reciprocity with other nations. The practice has been to ask for no exclusive privileges and to grant none, "but to offer to all nations and to ask from them entire reciprocity in navigation." 1 Kent, Comm. 34, note. This policy has been judicially recognized by the Supreme Court in *Oldfield* v. *Marriott,* 10 How. 146; and it is asserted that Congress had it in view in enacting the acts of 1884 and 1886, imposing the tonnage taxes. The review presented by counsel of the legislative and diplomatic correspondence touching this subject is historically interesting and instructive, and would be persuasive in the case of a doubtful meaning of an act of Congress, but it cannot be held to affect the interpretation of laws which are plain and unambiguous in their terms. The questions before the court must be determined by the ordinary and well settled rules applicable to the construction of and validity of statutes.

Soon after the passage of the act of June 26, 1884, claims were presented by the Government of Germany, and of other foreign Powers, having similar treaty stipulations with the United States, in relation to navigation for the benefit of the three-cent rate of tax, under the favored nation clause. The claims having been referred to the Department of Justice, the attorney general, on the 19th of September, 1886,[1] gave the following opinion:

> The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act and entered in our ports is, I think, purely geographical in character, inuring to the advantage of *any* vessel of *any* Power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act.
>
> I see no warrant, therefore, to claim that there is anything in "the most favored nation" clause of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside the limitation of the act.

The construction thus given to the statute is clearly consistent with its terms, which grant the privilege of the minimum tax to all vessels entered in United States from certain specified foreign ports, and not exclusively to the vessels of nations to whom those ports belong, or in whose territories the ports are situate, excepting the vessels of those Governments only which, in the imposition of tonnage taxes, discriminate against American vessels. In accordance with this construction, it follows that no particular favor is conferred on any nation, and that, with the exception noted, the vessels of all nations coming from the privileged ports are entered in the United States on an equal footing. Further discussion on this point would seem, therefore, to be fruitless; but it may be proper to observe that the construction of both the act of June 26, 1884, and that of June 19, 1886, and the complicated questions growing out of the claims of foreign Governments, for the lower rate of tonnage tax by virtue of their treaty rights, were brought to the attention of Congress by the President's message of January 14, 1889, transmitting a report of the Secretary of State in reference to the international questions arising from the imposition of differential tonnage dues upon vessels entering the United States from foreign countries. Ex. Doc-House Rep.,

[1] [1885.] *Post*, p. 141.

50th Cong., 3d Sess. The report, after mentioning the claims of the German minister for a reduction of the tax under the act of 1884, and for a proper refund of the dues charged on German ships entering the United States from German ports since the date of the act of 1886, stated: "To this suggestion the undersigned was unable to respond, the matter being one for the consideration of Congress. But the request assuredly deserves equitable consideration." In respect to the claim now made by the plaintiff, that the course of its ships coming from Bremen to New York by the way of Southampton is not such as to deprive the run of its character of a voyage from a German port to a port in the United States, within the meaning of the act of 1886, the report says:

> But it has been held by the commissioner of navigation that the voyage can not be so regarded, and that the vessels must pay dues as coming from Southampton, a British port. Similar rulings have been made in respect to other vessels of different nationality.

And the report further adds:

> Another instance of complication is that of a vessel starting from, we will say, a 6–30 cent port, and calling on her way to the United States at a 3–15 cent port, and a free port. Other combinations will readily suggest themselves, and the need not be stated. But in each case the vessel is required to pay the highest rate, without reference to the amount of cargo obtained at the various ports from which she comes. Thus a penalty may practically be imposed in many cases on indirect voyages. It is conceived that in many instances the main purpose of the Act may be defeated by these rulings, but it must be admitted that the law contains no provision to meet such cases. . . . This appears to be a proper subject for the consideration of Congress.

From an examination of the above extracts from his report, it will be seen that the Secretary of State was of the opinion that the questions referred to were to be addressed to the political, and not to the judicial, branch of the Government, and that Congress alone could be looked to for the redress of the class of wrongs complained of by the plaintiff, and to prevent their repetition. The plaintiff's counsel deny the correctness of the construction given to the act of 1884 by

the attorney general, and insist that the difference in tonnage rates, by which certain ports specially named in the act are favored, is a particular favor to the countries to which those ports belong, "in respect to their commerce and navigation," which *ipso facto* accrues, in pursuance of treaty right, to German vessels coming from German ports. It is also asserted that the treaty stipulations with Germany are paramount to the later acts of Congress, and that the former can not be annihilated by the latter. Admitting for the moment that the attorney general may have misconstrued the act, still it cannot be questioned that, excepting where rights have become vested under a treaty, to use the expression of Judge SWAYNE, in the *Cherokee Tobacco Case,* 11 Wall. 616, " a treaty may supersede a prior act of Congress and an act of Congress may supersede a prior treaty." The commissioner of navigation held that the acts of 1884 and 1886 were inconsistent with the treaties, and being of a later date must prevail, and in so ruling he is not without authority of adjudged cases. In *Foster* v. *Neilson,* 2 Pet. 314, Chief Justice MARSHALL, in delivering the opinion of the court, said:

> Our Constitution declares a treaty to be a law of the land. It is consequently to be regarded in the courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial, department and the legislature must execute the contract before it can become a rule for the court.

The same doctrine is held in *Taylor* v. *Morton,* 2 Curt. 454; *Ropes* v. *Clinch,* 8 Blatchf. 304. In the *Cherokee Tobacco Case, supra,* there was an open conflict between a treaty contract and a subsequent law, and the question was as to which should prevail. The 107th section of the Internal Revenue Act of July 20, 1868, provided "that the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection

> Every Cherokee Indian and freed person residing in the Cherokee Nation shall have the right to sell any products of his farm, including his or her livestock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying the tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

The collection officers had seized a quantity of tobacco belonging to the claimants which was found in the Cherokee Nation, outside of any collection district of the United States, and exemption from duty was claimed by virtue of the treaty. It was admitted that the repugnancy between the treaty and the statute was clear, and that they could not stand together; that one or the other must yield. The court decided that the language of the section was as clear and explicit as could be employed. It embraced indisputably the Indian Territory, and Congress not having thought proper to exclude them, it was not for the court to make the exception; and that the consequences arising from the repeal of the treaty were matters for legislative and not judicial action, and if a wrong had been done, the power of redress was with Congress and not with the judiciary. In *Taylor* v. *Morton,* the facts were these: Article 6 of the treaty of 1832, with Russia, stipulated that "no higher or other duties shall be imposed upon the importations into the United States of any article the produce or manufacture of Russia, than are or shall be payable on the like article being the produce or manufacture of any other foreign country." This was held by the court to be merely an agreement, to be carried into effect by Congress, and not to be enforced by the court, and that an act of Congress laying a duty of $25 a ton, on hemp from India, and $40 a ton, on hemp from other countries, did not authorize the courts to decide that Russian hemp should be admitted at the lower rate. Such a promise, it was said, addresses itself to the political and not to the judicial department of the Government, and the courts can not try the question whether it has been observed or not. The court expressly declined to give any opinion on the merits of the case, holding that the questions, whether treaty obligations have been kept or not, and whether treaty promises shall be withdrawn or performed, are matters that belong to diplomacy and legislation, and not to the administration of the laws. If Congress has departed from the treaty, it is immaterial to inquire whether the departure was accidental or designed, and if the latter whether the

reasons therefor were good or bad. If, by the act in question, they have not departed from the treaty, the plaintiff has no case. If they have, their act is the municipal law of the country, and any complaint, either by the citizen or the foreigner, must be made to those who alone are empowered by the constitution to judge of its grounds and act as may be suitable and just.

. . . . . .

Let judgment be entered in each case for the defendant.

TERLINDEN v. AMES[1]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 475. Argued January 6, 7, 1902.—Decided February 24, 1902.

One Terlinden, alias Graefe, was accused of various acts of forgery, counterfeiting, and the utterance of forged papers, committed during the year 1901, in the kingdom of Prussia. After the commission of these extraditable offences he fled from Germany and was apprehended in Illinois in 1901, as a fugitive from justice upon a warrant properly issued by Mark A. Foote, United States Commissioner for the Northern District of Illinois, upon the duly verified complaint of Dr. Walther Wever, Imperial German Consul at Chicago. On *habeas corpus* proceedings, the District Court found that the accused was lawfully restrained of his liberty, and the prisoner was remanded to the custody of John C. Ames, Marshal for the Northern District of Illinois.

From this order an appeal was taken to the Supreme Court of the United States. Among the errors assigned, were the following two: that the District Court erred in declining to hold that no treaty exists between the United States and the kingdom of Prussia or the German Empire, and in assuming the existence of such treaty.[2]

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

. . . . . .

This brings us to the real question, namely, the denial of the existence of a treaty of extradition between the United States and the

[1] 184 U. S. Reports, 270; October term, 1901.
[2] This statement is substituted for that of the report.

Kingdom of Prussia, or the German Empire. In these proceedings the application was made by the official representative of both the Empire and the Kingdom of Prussia, but was based on the extradition treaty of 1852. The contention is that, as the result of the formation of the German Empire, this treaty had been terminated by operation of law.

Treaties are of different kinds and terminable in different ways. The fifth article of this treaty provided, in substance, that it should continue in force until 1858, and thereafter until the end of a twelve months' notice by one of the parties of the intention to terminate it. No such notice has ever been given, and extradition has been frequently awarded under it during the entire intervening time.

Undoubtedly treaties may be terminated by the absorption of Powers into other Nationalities and the loss of separate existence, as in the case of Hanover and Nassau, which became by conquest incorporated into the Kingdom of Prussia in 1866. Cessation of independent existence rendered the execution of treaties impossible. But where sovereignty in that respect is not extinguished, and the power to execute remains unimpaired, outstanding treaties can not be regarded as avoided because of impossibility of performance.

This treaty was entered into by His Majesty the King of Prussia in his own name and in the names of eighteen other States of the Germanic Confederation, including the Kingdom of Saxony and the free city of Frankfort, and was acceded to by six other States, including the Kingdom of Würtemburg, and the free Hanseatic city of Bremen, but not including the Hanseatic free cities of Hamburg and Lubeck. The war between Prussia and Austria in 1866 resulted in the extinction of the Germanic Confederation and the absorption of Hanover, Hesse Cassel, Nassau and the free city of Frankfort, by Prussia.

The North German Union was then created under the praesidium of the Crown of Prussia, and our minister to Berlin, George Bancroft, thereupon recognized officially not only the Prussian Parliament, but also the Parliament of the North German United States, and the collective German Customs and Commerce Union, upon the ground that by the paramount constitution of the North German United States, the King of Prussia, to whom he was accredited, was at the head of those several organizations or institutions; and his action was entirely approved by this Government. Messages and Documents, Dep. of State,

1867–8, Part I, p. 601; Dip. Correspondence, Secretary Seward to Mr. Bancroft, Dec. 9, 1867.

February 22, 1868, a treaty relative to naturalization was concluded between the United States and His Majesty, the King of Prussia, on behalf of the North German Confederation, the third article of which read as follows: "The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Prussia and other States of Germany on the other part, the sixteenth day of June, one thousand eight hundred and fifty-two, is hereby extended to all the States of the North German Confederation." 15 Stat. 615. This recognized the treaty as still in force, and brought the Republics of Lubeck and Hamburg within its scope. Treaties were also made in that year between the United States and the Kingdoms of Bavaria and Würtemburg, concerning naturalization, which contained the provision that the previous conventions between them and the United States in respect of fugitives from justice should remain in force without change.

Then came the adoption of the Constitution of the German Empire. It found the King of Prussia, the chief executive of the North German Union, endowed with power to carry into effect its international obligations, and those of his kingdom, and it perpetuated and confirmed that situation. The official promulgation of that Constitution recited that it was adopted instead of the Constitution of the North German Union, and its preamble declared that "His Majesty the King of Prussia, in the name of the North German Union, His Majesty the King of Bavaria, His Majesty the King of Würtemburg, His Highness the Grand Duke of Baden, and his Royal Highness the Grand Duke of Hesse and by Rhine for those parts of the Grand Duchy of Hesse which are situated south of the Main, conclude an eternal alliance for the protection of the territory of the Confederation, and of the laws of the same, as well as for the promotion of the welfare of the German people." As we have heretofore seen, the laws of the Empire were to take precedence of those of the individual States, and it was vested with the power of general legislation in respect of crimes.

Article 11 read "The King of Prussia shall be the president of the Confederation, and shall have the title of German Emperor. The Emperor shall represent the Empire among nations, declare war, and conclude peace in the name of the same; enter into alliances and other

conventions with foreign countries, accredit ambassadors, and receive them. . . . So far as treaties with foreign countries refer to matters which, according to Article IV, are to be regulated by the legislature of the Empire, the consent of the Federal Council shall be required for their ratification, and the approval of the Diet shall be necessary to render them valid."

It is contended that the words in the preamble translated "an eternal alliance" should read "an eternal union," but this is not material, for admitting that the Constitution created a composite State instead of a system of confederated States, and even that it was called a confederated Empire rather to save the *amour propre* of some of its component parts than otherwise, it does not necessarily follow that the Kingdom of Prussia lost its identity as such, or that treaties theretofore entered into by it could not be performed either in the name of its King or that of the Emperor. We do not find in this constitution any provision which in itself operated to abrogate existing treaties or to affect the status of the Kingdom of Prussia in that regard. Nor is there anything in the record to indicate that outstanding treaty obligations have been disregarded since its adoption. So far from that being so, those obligations have been faithfully observed.

And without considering whether extinguished treaties can be renewed by tacit consent under our Constitution, we think that on the question whether this treaty has ever been terminated, governmental action in respect to it must be regarded as of controlling importance. During the period from 1871 to the present day, extradition from this country to Germany, and from Germany to this country, has been frequently granted under the treaty, which has thus been repeatedly recognized by both governments as in force. Moore's Report on Extradition with Returns of all Cases, 1890.

In 1889, in response to a request for information on international extradition as practiced by the German Government, the Imperial Foreign Office transmitted to our chargé at Berlin a memorial on the subject, in the note accompanying which it was said: "The questions referred to, in so far as they could not be uniformly answered for all the confederated German States, have been answered in that document as relating to the case of applications for extradition addressed to the Empire or Prussia." It was stated in the memorial, among other things:

> In so far as by laws and treaties of the Empire relating to the extradition of criminals, provisions which bind all the States of the union have not been made, those States are not hindered from independently regulating extradition by agreements with foreign States, or by laws enacted for their own territory.
>
> Of conventions, some of an earlier, some of a later period, for the extradition of criminals, entered into by individual States of the union with various foreign States, there exist a number, and in particular such with France, the Netherlands, Austria-Hungary, and Russia. With the United States of America, also, extradition is regulated by various treaties, as, besides the treaty of June 16, 1852, which applies to all of the States of the former North German Union, and also to Hesse, south of the Main, and to Würtemburg, there exist separate treaties with Bavaria and Baden, of September 12, 1853, and January 30, 1857, respectively. Moore's Report, 93, 94.

Thus it appears that the German Government has officially recognized, and continues to recognize, the treaty of June 16, 1852, as still in force, as well as similar treaties with other members of the Empire, so far as the latter has not taken specific action to the contrary or in lieu thereof. And see Laband, *Das Staatsrecht des Deutschen Reiches* (1894), 122, 123, 124, 142.

It is out of the question that a citizen of one of the German States, charged with being a fugitive from its justice, should be permitted to call on the courts of this country to adjudicate the correctness of the conclusions of the Empire as to its powers and the powers of its members, and especially as the Executive Department of our Government has accepted these conclusions and proceeded accordingly.

The same is true as respects many other treaties of serious moment, with Prussia, and with particular States of the Empire, and it would be singular indeed, if after the lapse of years of performance of their stipulations, these treaties must be held to have terminated because of the inability to perform during all that time of one of the parties.

In the notes accompanying the State Department's compilation of Treaties and Conventions between the United States and other Powers, published in 1889, Mr. J. C. Bancroft Davis treats of the subject thus:

> The establishment of the German Empire in 1871, and the complex relations of its component parts to each other and to the Empire, necessarily give rise to questions as to the treaties entered into with the North German Confederation and with many of the

States composing the Empire. It can not be said that any fixed rules have been established.

Where a State has lost its separate existence, as in the case of Hanover and Nassau, no questions can arise.

Where no new treaty has been negotiated with the Empire, the treaties with the various States which have preserved a separate existence have been resorted to.

The question of the existence of the extradition treaty with Bavaria was presented to the United States District Court, on the application of a person accused of forgery committed in Bavaria, to be discharged on *habeas corpus,* who was in custody after the issue of a mandate, at the request of the minister of Germany, the court held that the treaty was admitted by both governments to be in existence.

Such a question is, after all, purely a political one.

The case there referred to is that of *In re Thomas,* 12 Blatch. 370, in which the continuance of the extradition treaty with Bavaria was called in question, and Mr. Justice Blatchford, then District Judge, said:

It is further contended, on the part of Thomas, that the convention with Bavaria was abrogated by the absorption of Bavaria into the German Empire. An examination of the provisions of the Constitution of the German Empire does not disclose anything which indicates that then existing treaties between the several States composing the confederation called the German Empire, and foreign countries, were annulled, or to be considered as abrogated.

Indeed, it is difficult to see how such a treaty as that between Bavaria and the United States can be abrogated by the action of Bavaria alone, without the consent of the United States. Where a treaty is violated by one of the contracting parties, it rests alone with the injured party to pronounce it broken, the treaty being, in such case, not absolutely void, but voidable, at the election of the injured party, who may waive or remit the infraction committed, or may demand a just satisfaction, the treaty remaining obligatory if he chooses not to come to a rupture. 1 Kent's Com. 174. In the present case the mandate issued by the Government of the United States shows that the convention in question is regarded as in force both by the United States and by the German Empire, represented by its envoys, and by Bavaria, represented by the same envoy. The application of the foreign government was made through the proper diplomatic representative of the German Empire and of Bavaria, and the complaint before the commissioner was made by the proper consular authority representing the German Empire and also representing Bavaria.

We concur in the view that the question whether power remains in a foreign State to carry out its treaty obligations is in its nature political and not judicial, and that the courts ought not to interfere with the conclusions of the political department in that regard.

Treaties of extradition are executory in their character, and fall within the rule laid down by Chief Justice Marshall in *Foster* v. *Neilson,* 2 Pet. 253, 314, thus: "Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department."

In *Doe* v. *Braden,* 16 How. 635, 656, where it was contended that so much of the treaty of February 22, 1819, ceding Florida to the United States, as annulled a certain land grant, was void for want of power in the King of Spain to ratify such a provision, it was held that whether or not the King of Spain had power, according to the Constitution of Spain, to annul the grant, was a political and not a judicial question, and was decided when the treaty was made and ratified.

Mr. Chief Justice Taney said: "The treaty is therefore a law made by the proper authority, and the courts of justice have no right to annul or disregard any of its provisions, unless they violate the Constitution of the United States. It is their duty to interpret it and administer it according to its terms. And it would be impossible for the executive department of the Government to conduct our foreign relations with any advantage to the country, and fulfil the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power by its constitution and laws, to make the engagements into which he entered."

Extradition may be sufficiently defined to be the surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender.

In the United States, the general opinion and practice have been that extradition should be declined in the absence of a conventional or

legislative provision. 1 Moore on Extradition, 21; *United States* v. *Rauscher,* 119 U. S. 407.

The power to surrender is clearly included within the treaty-making power and the corresponding power of appointing and receiving ambassadors and other public ministers. *Holmes* v. *Jennison,* 14 Pet. 540, 569. Its exercise pertains to public policy and governmental administration, is devolved on the Executive authority, and the warrant of surrender is issued by the Secretary of State as the representative of the President in foreign affairs.

If it be assumed in the case before us, and the papers presented on the motion for a stay advise us that such is the fact, that the commissioner, on hearing, deemed the evidence sufficient to sustain the charges, and certified his findings and the testimony to the Secretary of State, and a warrant for the surrender of Terlinden on the proper requisition was duly issued, it can not be successfully contended that the courts could properly intervene on the ground that the treaty under which both governments had proceeded, had terminated by reason of the adoption of the constitution of the German Empire, notwithstanding the judgment of both governments to the contrary.

The decisions of the Executive Department in matters of extradition, within its own sphere, and in accordance with the Constitution, are not open to judicial revision, and it results that where proceedings for extradition, regularly and constitutionally taken under the acts of Congress, are pending, they can not be put an end to by writs of *habeas corpus.*

The District Court was right, and its final order is

Affirmed.

. . . . . .

DISCONTO GESELLSCHAFT v. UMBREIT[1]

ERROR TO THE CIRCUIT COURT OF MILWAUKEE COUNTY (BRANCH NO. 1), STATE OF WISCONSIN

No. 63. Argued December 10, 11, 1907. Decided February 24, 1908.

It is too late to raise the Federal question on motion for rehearing in the state court, unless that court entertains the motion and expressly passes on the Federal question.

While aliens are ordinarily permitted to resort to our courts for redress of wrongs and protection of rights, the removal of property to another jurisdiction for adjustment of claims against it is a matter of comity and not of absolute right, and, in the absence of treaty stipulations, it is within the power of a State to determine its policy in regard thereto.

The refusal by a State to exercise comity in such manner as would impair the rights of local creditors by removing a fund to a foreign jurisdiction for administration does not deprive a foreign creditor of his property without due process of law or deny to him the equal protection of the law; and so held as to a judgment of the highest court of Wisconsin holding the attachment of a citizen of that State superior to an earlier attachment of a foreign creditor.

While the treaty of 1828 with Prussia has been recognized as being still in force by both the United States and the German Empire, there is nothing therein undertaking to change the rule of national comity that permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of its jurisdiction for administration in favor of creditors beyond its borders.

127 Wisconsin, 676, affirmed.

. . . . . .

Mr. Justice DAY delivered the opinion of the court.

The Disconto Gesellschaft, a banking corporation of Berlin, Germany, began an action in the Circuit Court of Milwaukee County, Wisconsin, on August 17, 1901, against Gerhard Terlinden and at the same time garnisheed the First National Bank of Milwaukee. The bank appeared and admitted an indebtedness to Terlinden of $6,420. The defendant in error Umbreit intervened and filed an answer, and later an amended answer.

A reply was filed, taking issue upon certain allegations of the answer, and a trial was had in the Circuit Court of Milwaukee County, in which the court found the following facts:

[1] 208 U. S. Reports, 570; October term, 1907.

That on the 17th day of August, 1901, the above-named plaintiff, the Disconto Gesellschaft, commenced an action in this court against the above-named defendant, Gerhard Terlinden, for the recovery of damages sustained by the tort of the said defendant, committed in the month of May, 1901; that said defendant appeared in said action by A. C. Umbreit, his attorney, on August 19, 1901, and answered the plaintiff's complaint; that thereafter such proceedings were had in said action that judgment was duly given on February 19, 1904, in favor of said plaintiff, Disconto Gesellschaft, and against said defendant, Terlinden, for $94,145.11 damages and costs; that $85,371.49, with interest from March 26, 1904, is now due and unpaid thereon; that at the time of the commencement of said action, to wit, on August 17, 1901, process in garnishment was served on the above-named garnishee, First National Bank of Milwaukee, as garnishee of the defendant Terlinden.

That on August 9, 1901, and on August 14, 1901, a person giving his name as Theodore Grafe deposited in said First National Bank of Milwaukee the equivalent of German money aggregating $6,420.00 to his credit upon account; that said sum has remained in said bank ever since, and at the date hereof with interest accrued thereon amounted to $6,969.47.

That the defendant Gerhard Terlinden and said Theodore Grafe, mentioned in the finding, are identical and the same person.

That the interpleaded defendant, Augustus C. Umbreit, on March 21, 1904, commenced an action in this court against the defendant Terlinden for recovery for services rendered between August 16, 1901, and February 1, 1903; that no personal service of the summons therein was had on the said summons therein was served by publication only and without the mailing of a copy of the summons and of complaint to said defendant; that said defendant did not appear therein; that on June 11, 1904, judgment was given in said action by default in favor of said Augustus C. Umbreit and against said defendant Terlinden for $7,500 damages, no part whereof has been paid; that at the time of the commencement of said action process of garnishment was served, to wit, on March 22, 1904, on the garnishee, First National Bank of Milwaukee, as garnishee of said defendant Terlinden.

That the defendant Terlinden at all the times set forth in finding number one was and still is a resident of Germany; that about July 11, 1901, he absconded from Germany and came to the State of Wisconsin and assumed the name of Theodore Grafe; that on August 16, 1901, he was apprehended as a fugitive from justice upon extradition proceedings duly instituted against him, and was thereupon extradited to Germany.

That the above-named plaintiff, the Disconto Gesellschaft, at all the times set forth in the findings was, ever since has been and still is a foreign corporation, to wit, of Germany, and during all said time had its principal place of business in Berlin, Germany; that the above-named defendant, Augustus C. Umbreit, during all said times was and still is a resident of the State of Wisconsin.

That on or about the 27th day of July, 1901, proceedings in bankruptcy were instituted in Germany against said defendant Terlinden, and Paul Hecking appointed trustee of his estate in such proceedings on said date; that thereafter, and on or after August 21, 1901, the above-named plaintiff, the Disconto Gesellschaft, was appointed a member of the committee of creditors of the defendant Terlinden's personal estate, and accepted such appointment; and that the above-named plaintiff, the Disconto Gesellschaft, presented its claim to said trustee in said bankruptcy proceedings; that said claim had not been allowed by said trustee in January, 1902, and there is no evidence that it has since been allowed; that nothing has been paid upon said claim; that said claim so presented and submitted is the same claim upon which action was brought by the plaintiff in this court and judgment given, as set forth in finding No. 1; that said action was instituted by said plaintiff, the Disconto Gesellschaft, through the German consul in Chicago; and that the steps so taken by the plaintiff, the Disconto Gesellschaft, had the consent and approval of Dr. Paul Hecking as trustee in Bankruptcy, so appointed in the bankruptcy proceedings in Germany, and that after the commencement of the same the plaintiff, the Disconto Gesellschaft, agreed with said trustee that the moneys it should recover in said action should form part of the said estate in bankruptcy and be handed over to said trustee; that, among other provisions, the German bankrupt act contained the following: "Sec. 14, Pending the bankruptcy proceedings, neither the assets nor any other property of the bankrupt are subject to attachment or execution in favor of individual creditors."

Upon the facts thus found the Circuit Court rendered a judgment giving priority to the levy of the Disconto Gesellschaft for the satisfaction of its judgment out of the fund attached in the hands of the bank. Umbreit then appealed to the Supreme Court of Wisconsin. That court reversed the judgment of the Circuit Court, and directed judgment in favor of Umbreit, that he recover the sum garnisheed in the bank. 127 Wisconsin, 651. Thereafter a remittitur was filed in

the Circuit Court of Milwaukee County and a final judgment rendered in pursuance of the direction of the Supreme Court of Wisconsin. This writ of error is prosecuted to reverse that judgment. At the same time a decree in an equity suit, involving a fund in another bank, was reversed and remanded to the Circuit Court. This case had been heard, by consent, with the attachment suit. With it we are not concerned in this proceeding.

No allegation of Federal rights appeared in the case until the application for rehearing. In this application it was alleged that the effect of the proceedings in the state court was to deprive the plaintiff in error of its property without due process of law, contrary to the fourteenth amendment, and to deprive it of certain rights and privileges guaranteed to it by treaty between the Kingdom of Prussia and the United States. The Supreme Court of Wisconsin, in passing upon the petition for rehearing and denying the same, dealt only with the alleged invasion of treaty rights, overruling the contention of the plaintiff in error. 127 Wisconsin, 676. It is well settled in this court that it is too late to raise Federal questions reviewable here by motions for rehearing in the state court. *Pim* v. *St. Louis,* 165 U. S. 273; *Fullerton* v. *Texas,* 196 U. S. 192; *McMillen* v. *Ferrum Mining Company,* 197 U. S. 343, 347; *French* v. *Taylor,* 199 U. S. 274, 278. An exception to this rule is found in cases where the Supreme Court of the State entertains the motion and expressly passes upon the Federal question. *Mallett* v. *North Carolina,* 181 U. S. 589; *Leigh* v. *Green,* 193 U. S. 79.

Conceding that this record sufficiently shows that the Supreme Court heard and passed upon the Federal questions made upon the motion for rehearing, we will proceed briefly to consider them.

The suit brought by the Disconto Gesellschaft in attachment had for its object to subject the fund in the bank in Milwaukee to the payment of its claim against Terlinden. The plaintiff was a German corporation and Terlinden was a German subject. Umbreit, the intervenor, was a citizen and resident of Wisconsin. The Supreme Court of Wisconsin adjudged that the fund attached could not be subjected to the payment of the indebtedness due the foreign corporation as against the claim asserted to the fund by one of its own citizens, although that claim arose after the attachment by the foreign creditor; and, further, that the fact that the effect of judgment in favor of the foreign corporation would be, under the facts found, to remove the fund to a foreign country, there to be administered in favor of foreign

creditors, was against the public policy of Wisconsin, which forbade such discrimination as against a citizen of that State.

Alien citizens, by the policy and practice of the courts of this country, are ordinarily permitted to resort to the courts for the redress of wrongs and the protection of their rights. 4 Moore, *International Law Digest,* § 536, p. 7; Wharton on Conflict of Laws, § 17.

But what property may be removed from a State and subjected to the claims of creditors of other States, is a matter of comity between nations and States and not a matter of absolute right in favor of creditors of another sovereignty, when citizens of the local State or country are asserting rights against property within the local jurisdiction.

" 'Comity,' in the legal sense," says Mr. Justice Gray, speaking for this court in *Hilton* v. *Guyot,* 159 U. S. 113, 163, "is neither a matter of absolute obligation on the one hand nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows in its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."

In the elaborate examination of the subject in that case many cases are cited and the writings of leading authors on the subject extensively quoted as to the nature, obligation and extent of comity between nations and States. The result of the discussion shows that how far foreign creditors will be protected and their rights enforced depends upon the circumstances of each case, and that all civilized nations have recognized and enforced the doctrine that international comity does not require the enforcement of judgment in such wise as to prejudice the rights of local creditors and the superior claims of such creditors to assert and enforce demands against property within the local jurisdiction. Such recognition is not inconsistent with that moral duty to respect the rights of foreign citizens which inheres in the law of nations. Speaking of the doctrine of comity, Mr. Justice Story says: "Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasion on which its exercises may be justly demanded." Story on Conflict of Laws, § 33.

The doctrine of comity has been the subject of frequent discussion in the courts of this country when it has been sought to assert rights accruing under assignments for the benefit of creditors in other States

as against the demands of local creditors, by attachment or otherwise in the State where the property is situated. The cases were reviewed by Mr. Justice Brown, delivering the opinion of the court in *Security Trust Company* v. *Dodd, Mead & Co.*, 173 U. S. 624, and the conclusion reached that voluntary assignments for the benefit of creditors should be given force in other States as to property therein situate, except so far as they come in conflict with the rights of local creditors, or with the public policy of the State in which it is sought to be enforced; and, as was said by Mr. Justice McLean in *Oakey v. Bennett*, 11 How. 33, 44, "national comity does not require any Government to give effect to such assignment [for the benefit of creditors] when it shall impair the remedies or lessen the securities of its own citizens."

There being, then, no provision of positive law requiring the recognition of the right of the plaintiff in error to appropriate property in the State of Wisconsin and subject it to distribution for the benefit of foreign creditors as against the demands of local creditors, how far the public policy of the State permitted such recognition was a matter for the State to determine for itself. In determining that the policy of Wisconsin would not permit the property to be thus appropriated to the benefit of alien creditors as against the demands of the citizens of the State, the Supreme Court of Wisconsin has done no more than has been frequently done by nations and States in refusing to exercise the doctrine of comity in such wise as to impair the right of local creditors to subject local property to their just claims. We fail to perceive how this application of a well known rule can be said to deprive the plaintiff in error of its property without due process of law.

Upon the motion for rehearing the plaintiff in error called attention to two alleged treaty provisions between the United States and the Kingdom of Prussia, the first from the treaty of 1828, and the second from the treaty of 1799. As to the last mentioned treaty the following provision [Art. 7] was referred to:

> Each party shall endeavor by all the means in their power to protect and defend all vessels and other effects, belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land; . . .

The treaty of 1799 expired by its own terms on June 2, 1810, and the provision relied upon is not set forth in so much of the treaty as

was revived by Article 12 of the treaty of May 1, 1828. See Compilation of Treaties in Force, 1904, prepared under resolution of the Senate, pp. 638 *et seq.* If this provision of the treaty of 1799 were in force we are unable to see that it has any bearing upon the present case.

Article 1 of the treaty of 1828 between the Kingdom of Prussia and the United States is as follows:

> There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty, to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

This treaty is printed as one of the treaties in force in the compilation of 1904, p. 643, and has undoubtedly been recognized by the two Governments as still in force since the formation of the German Empire. See *Terlinden* v. *Ames,* 184 U. S. 270; Foreign Relations of 1883, p. 369; Foreign Relations of 1885, pp. 404, 443, 444; Foreign Relations of 1887, p. 370; Foreign Relations of 1895, part one, 539.

Assuming, then, that this treaty is still in force between the United States and the German Empire, and conceding the rule that treaties should be liberally interpreted with a view to protecting the citizens of the respective countries in rights thereby secured, is there anything in this article which required any different decision in the Supreme Court of Wisconsin than that given? The inhabitants of the respective countries are to be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs, and they shall enjoy, to that effect, the same security and protection as the natives of the country wherein they reside, upon submission to the laws and ordinances there prevailing. It requires very great ingenuity to perceive anything in this treaty provision applicable to the present case. It is said to be found in the right of citizens of Prussia to attend to their affairs in this country. The treaty provides that for that purpose they are to have the same security and protection as natives in the country wherein they reside. Even between States of

the American Union, as shown in the opinion of Mr. Justice Brown in *Security Trust Co. v. Dodd, Mead & Co.*, 173 U. S. *supra*, it has been the constant practice not to recognize assignments for the benefit of creditors outside the State, where the same came in conflict with the rights of domestic creditors seeking to recover their debts against local property. This is the doctrine in force as against natives of the country residing in other States, and it is this doctrine which has been applied by the Supreme Court of Wisconsin to foreign creditors residing in Germany. In short, there is nothing in this treaty undertaking to change the well recognized rule between States and nations which permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of the jurisdiction for administration in favor of those residing beyond their borders.

The judgment of the Circuit Court of Milwaukee County entered upon the remittitur from the Supreme Court of Wisconsin is

Affirmed.

THE STEAMSHIP *APPAM*[1]

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Nos. 650, 722. Argued January 15, 16, 1917.—Decided March 6, 1917.

The British merchant steamship *Appam*, captured on the high seas by a German cruiser and navigated to a port of the United States in control of German officers and crew, during the war between Great Britain and Germany, is *held* to have been brought here as a prize.

Under the principles of international law, as recognized by our government since an early day in its history and as emphasized in its attitude in the Hague Conference of 1907, it is a clear breach of our neutral rights for one of two belligerent governments, with both of which we are at peace, to make use of our ports for the indefinite storing and safe-keeping of prizes captured from its adversary on the high seas.

Failure of our government to issue a proclamation on the subject will not warrant the use of our ports to store prizes indefinitely, and certainly not where the possibility of removal depends upon recruiting crews in violation of our established rules of neutrality.

---

[1] 243 U. S. Reports, 122; October term, 1916. The docket titles of these cases are: No. 640, *Hans Berg, Prize Master in charge of the Prize Ship "Appam," and L. M. von Schilling, Vice-Consul of the German Empire, Appellants*, v. *British & African Steam Navigation Co.*; No. 722, *Same* v. *Henry G. Harrison, Master of the steamship "Appam."* For the diplomatic correspondence and the decision of the German prize court, see *post*, p. 200.

The Treaty with Prussia of 1799, 8 Stat. 172, 173, Article 19, makes no provision for indefinite stay of vessels, and includes prizes only when in charge of vessels of war.

The violation of neutrality committed by a belligerent in wrongfully making use of one of our ports for storing indefinitely a merchant vessel and cargo captured on the righ seas, affords jurisdiction in admiralty to the United States District Court of the locality to seize the vessel and cargo and restore them to their private owners.

In such case, proceedings in a prize court of the belligerent country could not oust the jurisdiction of the District Court having the vessel in custody or defeat its judgment.

234 Fed. Rep. 389, affirmed.

Mr. Justice DAY delivered the opinion of the court.

These are appeals from the District Court of the United States for the Eastern District of Virginia, in two admiralty cases. No. 650 was brought by the British & African Steam Navigation Company, Limited, owner of the British steamship, *Appam,* to recover possession of that vessel. No. 722 was a suit by the master of the *Appam* to recover possession of the cargo. In each of the cases the decree was in favor of the libellant.

The facts are not in dispute and from them it appears: That during the existence of the present war between Great Britain and Germany, on the 15th day of January, 1916, the steamship *Appam* was captured on the high seas by the German cruiser *Moewe.* The *Appam* was a ship under the British flag, registered as an English vessel, and is a modern cargo and passenger steamship of 7800 tons burden. At the time of her capture she was returning from the West Coast of Africa to Liverpool, carrying a general cargo of cocoa beans, palm oil, kernels, tin, maize, sixteen boxes of specie, and some other articles. At the West African port she took on 170 passengers, eight of whom mere military prisoners of the English Government. She had a crew of 160 or thereabouts, and carried a three-pound gun at the stern. The *Appam* was brought to by a shot across her bows from the *Moewe,* when about a hundred yards away, and was boarded without resistance by an armed crew from the *Moewe.* This crew brought with them two bombs, one of which was slung over the bow and the other over the stern of the *Appam.* An officer from the *Moewe* said to the captain of the *Appam* that he was sorry he had to take his ship, asked him how many passengers he had, what cargo, whether he had

any specie, and how much coal. When the shot was fired across the bows of the *Appam,* the captain instructed the wireless operator not to touch the wireless instrument, and his officers not to let any one touch the gun on board. The officers and crew of the *Appam,* with the exception of the engine-room force, thirty-five in number, and the second officer, were ordered on board the *Moewe.* The captain, officers and crew of the *Appam* were sent below, where they were held until the evening of the 17th of January, when they and about 150 others, officers and crews of certain vessels previously sunk by the *Moewe,* were ordered back to the *Appam* and kept there as prisoners. At the time of the capture, the senior officer of the boarding party told the chief engineer of the *Appam* he was now a member of the German navy; if he did not obey orders his brains would be blown out, but if he obeyed, not a hair of his head should be touched. The *Appam's* officer was instructed to tell his staff the same thing, and if they did not obey orders they would be brought to the German officer and shot. Inquiries were made by the German officer in command of the *Appam* as to revolutions of the engines, the quantity of coal on hand and the coal consumption for different speeds, and instructions were given that steam be kept up handy, and afterwards the engineer was directed to set the engines at the revolutions required, and the ship got under way.

Lieutenant Berg, who was the German officer in command of the *Appam* after its capture, told the engineer on the second morning that he was then in charge of the ship, asked of him information as to fuel consumption, and said that he expected the engineer to help him all he could, and the more he did for him the better it would be for everybody on the ship. The engineer said he would, and did so. The engines were operated with a bomb secured to the port main injector valve, and a German sailor stationed alongside the bomb with a revolver. There was a guard below of four or five armed Germans, who were relieved from time to time, but did not interfere with the working of the ship. The German officer, Lieutenant Berg, gave directions as to working the engines, and was the only officer on board who wore a uniform.

On the night of the capture, the specie in the specie-room was taken on board the *Moewe.* After Lieutenant Berg took charge of the *Appam,* bombs were slung over her bow and stern, one large bomb, said to contain about two hundred pounds of explosive, was placed

on the bridge, and several smaller ones in the chart room. Lieutenant Berg informed the captain of the *Appam,* pointing to one of the bombs, "That is a bomb; if there is any trouble, mutiny, or attempt to take the ship, I have orders to blow up the ship instantly." He also said, "There are other bombs about the ship; I do not want to use them, but I shall be compelled to if there is any trouble." The bombs were kept in the positions stated until the ship arrived at the Virginia Capes, when they were removed. Lieutenant Berg, on reaching Hampton Roads, asked the crew of the *Appam* to drop the anchor, as he had not men to do it.

During the trip to the westward, the officers and crew of the *Appam* were not allowed to see the ship's compass to ascertain her course, and all lights were obscured during the voyage. The German prisoners, with the exception of two who went on board the *Moewe,* were armed and placed over the passengers and crew of the *Appam* as a guard all the way across. For two days after the capture, the *Appam* remained in the vicinity of the *Moewe,* and then was started westward. Her course for the first two or three days was southwesterly, and afterwards westerly, and was continued until her arrival at the Virginia Capes on the 31st of January. The engine room staff of the *Appam* was on duty operating the vessel across to the United States; the deck crew of the *Appam* kept the ship clean, and the navigation was conducted entirely by the Germans, the lookouts being mostly German prisoners.

At the time of the capture, the *Appam* was approximately distant 1,590 miles from Emden, the nearest German port; from the nearest available port, namely, Punchello, in the Madeiras, 130 miles; from Liverpool, 1,450 miles; and from Hampton Roads, 3,051 miles. The *Appam* was found to be in first class order, seaworthy, with plenty of provisions, both when captured and at the time of her arrival in Hampton Roads.

The order or commission delivered to Lieutenant Berg by the commander of the *Moewe* is as follows:

> Information for the American Authorities. The bearer of this, Lieutenant of the Naval Reserve, Berg, is appointed by me to the command of the captured English steamer *Appam* and has orders to bring the ship into the nearest American harbor and there to lay up. Kommando S. M. H. *Moewe.* Count Zu Dohna, Cruiser Captain and Commander. (Imperial Navy Stamp.) Kommando S. M. S. *Moewe.*

Upon arrival in Hampton Roads, Lieutenant Berg reported his arrival to the Collector, and filed a copy of his instructions to bring the *Appam* into the nearest American port and there to lay up.

On February 2nd, his Excellency, the German Ambassador, informed the State Department of the intention, under alleged treaty rights, to stay in an American port until further notice, and requested that the crew of the *Appam* be detained in the United States for the remainder of the war.

The prisoners brought in by the *Appam* were released by order of the American Government.

On February 16th, and sixteen days after the arrival of the *Appam* in Hampton Roads, the owner of the *Appam* filed the libel in case No. 650, to which answer was filed on March 3rd. On March 7th, by leave of court, an amended libel was filed, by which the libellant sought to recover the *Appam* upon the claim that holding and detaining the vessel in American waters was in violation of the law of nations and the laws of the United States and of the neutrality of the United States. The answer of the respondents to the amended libel alleged that the *Appam* was brought in as a prize by a prize master, in reliance upon the Treaty of 1799 between the United States and Prussia; that by the general principles of international law the prize master was entitled to bring his ship into the neutral port under these circumstances, and that the length of stay was not a matter for judicial determination; and that proceedings had been instituted in a proper prize court of competent jurisdiction in Germany for the condemnation of the *Appam* as a prize of war; and averred that the American court had no jurisdiction.

The libel against the *Appam's* cargo was filed on March 13th, 1916, and answer filed on March 31st. During the progress of the case, libellant moved the court to sell a part of the cargo as perishable; on motion the court appointed surveyors, who examined the cargo and reported that the parts so designated as perishable should be sold; upon their report orders of sale were entered, under which such perishable parts were sold, and the proceeds of that sale, amounting to over $600,000, are now in the registry of the court, and the unsold portions of the cargo are now in the custody of the marshal of the Eastern District of Virginia.

The argument in this case has taken wide range, and orally and in

printed briefs counsel have discussed many questions which we do not consider necessary to decide in determining the rights involved in these appeals.

From the facts which we have stated, we think the decisive questions resolve themselves into three: First, was the use of an American port, under the circumstances shown, a breach of this Nation's neutrality under the principles of international law? Second, was such use of an American port justified by the existing treaties between the German Government and our own? Third, was there jurisdiction and right to condemn the *Appam* and her cargo in a court of admiralty of the United States?

It is familiar international law that the usual course after the capture of the *Appam* would have been to take her into a German port, where a prize court of that nation might have adjudicated her status, and, if it so determined, condemned the vessel as a prize of war. Instead of that, the vessel was neither taken to a German port, nor to the nearest port accessible of a neutral power, but was ordered to, and did, proceed over a distance of more than three thousand miles, with a view to laying up the captured ship in an American port.

It was not the purpose to bring the vessel here within the privileges universally recognized in international law, *i. e.,* for necessary fuel or provisions, or because of stress of weather or necessity of repairs, and to leave as soon as the cause of such entry was satisfied or removed. The purpose for which the *Appam* was brought to Hampton Roads, and the character of the ship, are emphasized in the order which we have quoted to take her to an American port and there lay her up and in a note from his Excellency, the German Ambassador, to the Secretary of State, in which the right was claimed to keep the vessel in an American port until further notice. (Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties, Department of State, European War No. 3, page 331,) and a further communication from the German Ambassador forwarding a memorandum of a telegram from the German Government concerning the *Appam* (*id.* page 333), in which it was stated:

> *Appam* is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Article 19 of the Prusso-American treaty of 1799. Article 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war

according to Article 28. The above-mentioned Article 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English.

In view of these facts, and this attitude of the Imperial Government of Germany, it is manifest that the *Appam* was not brought here in any other character than as a prize, captured at sea by a cruiser of the German navy, and that the right to keep her here, as shown in the attitude of the German Government and in the answer to the libel, was rested principally upon the Prussian-American Treaty of 1799.

The principles of international law recognized by this Government, leaving the treaty aside, will not permit the ports of the United States to be thus used by belligerents. If such use were permitted, it would constitute of the ports of a neutral country harbors of safety into which prizes, captured by one of the belligerents, might be safely brought and indefinitely kept.

From the beginning of its history this country has been careful to maintain a neutral position between warring Governments, and not to allow the use of its ports in violation of the obligations of neutrality; nor to permit such use beyond the necessities arising from the perils of the seas or the necessities of such vessels as to seaworthiness, provisions and supplies. Such usage has the sanction of international law, Dana's Note to Wheaton on International Law, 1866, 8th American Edition, Section 391, and accords with our own practice. Moore's Digest of International Law, Vol. 7, 936, 937, 938.

A policy of neutrality between warring nations has been maintained from 1793 to this time. In that year President Washington firmly denied the use of our ports to the French Minister for the fitting out of privateers to destroy English commerce. This attitude led to the enactment of the Neutrality Act of 1794, afterwards embodied in the act of 1818, enacting a code of neutrality, which among other things inhibited the fitting out and arming of vessels; the augmenting or increasing of the force of armed vessels; or the setting on foot in our territory of military expeditions; and empowering the President to order foreign vessels of war to depart from our ports and compelling them so to do when required by the law of nations. Moore on International Arbitrations, v. 4, 3967 *et seq.*

This policy of the American Government was emphasized in its attitude at the Hague Conference of 1907. Article 21 of the Hague Treaty provides:

> A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.
>
> It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22 provides:

> A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

To these articles, adherence was given by Belgium, France, Austria-Hungary, Germany, the United States, and a number of other nations. They were not ratified by the British Government. This Government refused to adhere to Article 23, which provides:

> A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a Prize court. It may have the prize taken to another of its ports.
>
> If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.
>
> If the prize is not under convoy, the prize crew are left at liberty.

And in the proclamation of the convention the President recited the resolution of the Senate adhering to it,

> subject to the reservation and exclusion of its Article 23 and with the understanding that the last clause of Article 3 thereof implies the duty of a neutral Power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction. 36 Stat., Pt. II, p. 2438.

While this treaty may not be of binding obligation, owing to lack of ratification, it is very persuasive as showing the attitude of the

American Government when the question is one of international law; from which it appears clearly that prizes could only be brought into our ports upon general principles recognized in international law, on account of unseaworthiness, stress of weather, or want of fuel or provisions, and we refused to recognize the principle that prizes might enter our ports and roadsteads, whether under convoy or not, to be sequestrated pending the decision of a prize court. From the history of the conference it appears that the reason for the attitude of the American delegates in refusing to accept Article 23 was that thereby a neutral might be involved in participation in the war to the extent of giving asylum to a prize which the belligerent might not be able to conduct to a home port. See Scott on Peace Conferences, 1899–1907, Vol. II, p. 237 *et seq.*

Much stress is laid upon the failure of this Government to proclaim that its ports were not open to the reception of captured prizes, and it is argued that having failed to interdict the entrance of prizes into our ports permission to thus enter must be assumed. But whatever privilege might arise from this circumstance it would not warrant the attempted use of one of our ports as a place in which to store prizes indefinitely, and certainly not where no means of taking them out are shown except by the augmentation of her crew, which would be a clear violation of established rules of neutrality.

As to the contention on behalf of the appellants that Article 19 of the Treaty of 1799 justifies bringing in and keeping the *Appam* in an American port, in the situation which we have outlined, it appears that in response to a note from his Excellency, the German Ambassador, making that contention, the American Secretary of State, considering the treaty, announced a different conclusion (Diplomatic Correspondence with Belligerent Governments, *supra*, page 335 *et seq.*); and we think this view is justified by a consideration of the terms of the treaty. Article 19 of the treaty of 1799, using the translation adopted by the American State Department, reads as follows:

> The vessels of war, public and private, of both parties, shall carry (*conduire*) freely, wheresoever they please, the vessels and effects taken (*pris*) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (*prises*) be arrested, searched or put under legal process, when they come to and enter the ports of the other party, but may freely be car-

> ried (*conduites*) out again at any time by their captors (*le vaisseau preneur*) to the places expressed in their commissions, which the commanding officer of such vessel (*le dit vaisseau*) shall be obliged to show. [But conformably to the treaties existing between the United States and Great Britain, no vessel (*vaisscau*) that shall have made a prize (*prise*) upon British subjects shall have a right to shelter in the ports of the United States, but if (*il est*) forced therein by tempests, or any other danger or accident of the sea, they (*il sera*) shall be obliged to depart as soon as possible.] (The provision concerning the treaties between the United States and Great Britain is no longer in force, having been omitted by the treaty of 1828. See Compilation of Treaties in Force, 1904, pages 641 and 646.)

We think an analysis of this article makes manifest that the permission granted is to vessels of war and their prizes, which are not to be arrested, searched, or put under legal process, when they come into the ports of the high contracting parties, to the end that they may be freely carried out by their captors to the places expressed in their commissions, which the commanding officer is obliged to show. When the *Appam* came into the American harbor she was not in charge of a vessel of war of the German Empire. She was a merchant vessel, captured on the high seas and sent into the American port with the intention of being kept there indefinitely, and without any means of leaving that port for another as contemplated in the treaty, and required to be shown in the commission of the vessel bringing in the prize. Certainly such use of a neutral port is very far from that contemplated by a treaty which made provision only for temporary asylum for certain purposes, and can not be held to imply an intention to make of an American port a harbor of refuge for captured prizes of a belligerent Government. We can not avoid the conclusion that in thus making use of an American port there was a clear breach of the neutral rights of this Government, as recognized under principles of international law governing the obligations of neutrals, and that such use of one of our ports was in no wise sanctioned by the treaty of 1799.

It remains to inquire whether there was jurisdiction and authority in an Admiralty Court of the United States, under these circumstances, to order restoration to an individual owner of the vessel and cargo.

The earliest authority upon this subject in the decisions of this court is found in the case of *Glass* v. *The Sloop Betsy*, 3 Dallas, 6,

decided in 1794, wherein it appeared that the commander of the French privateer, *The Citizen Genet,* captured as a prize on the high seas the sloop *Betsy* and sent the vessel into Baltimore, where the owners of the sloop and cargo filed a libel in the District Court of Maryland, claiming restitution because the vessel belonged to subjects of the King of Sweden, a neutral Power, and the cargo was owned jointly by Swedes and Americans. The District Court denied jurisdiction, the Circuit Court affirmed the decree, and an appeal was prosecuted to this court. The unanimous opinion was announced by Mr. Chief Justice Jay, holding that the District Courts of the United States possessed the powers of courts of admiralty, whether sitting as an instance or as a prize court, and sustained the jurisdiction of the District Court of Maryland, and held that that court was competent to inquire into and decide whether restitution should be made to the complainants conformably to the laws of nations and the treaties and laws of the United States.

The question came again before this court in the case of *The Santissima Trinidad*, decided in 1822, reported in 7 Wheaton, 283. In that case it was held that an illegal capture would be invested with the character of a tort, and that the original owners were entitled to restitution when the property was brought within our jurisdiction. The opinion was delivered by Mr. Justice Story, and, after a full discussion of the matter, the court held that such an illegal capture, if brought into the jurisdiction of the courts of the United States, was subject to condemnation and restitution to the owners, and the learned justice said:

> If, indeed, the question were entirely new, it would deserve very grave consideration, whether a claim founded on a violation of our neutral jurisdiction could be asserted by private persons, or in any other manner than a direct intervention of the Government itself. In the case of a capture made within a neutral territorial jurisdiction, it is well settled, that as between the captors and the captured, the question can never be litigated. It can arise only upon a claim of the neutral sovereign asserted in his own courts or the courts of the Power having cognizance of the capture itself for the purposes of prize. And by analogy to this course of proceeding, the interposition of our own Government might seem fit to have been required before cognizance of the wrong could be taken by our courts. But the practice from the beginning in this class of causes, a period of nearly 30 years, has

> been uniformly the other way; and it is now too late to disturb it. If any inconvenience should grow out of it, from reasons of state policy or executive discretion, it is competent for Congress to apply at its pleasure the proper remedy. (Page 349.)
>
> . . . Whatever may be the exemption of the public ship herself, and of her armament and munitions of war, the prize property which she brings into our ports is liable to the jurisdiction of our courts, for the purpose of examination and inquiry, and if a proper case be made out, for restitution to those whose possession has been devested by a violation of our neutrality; and if the goods are landed from the public ship in our ports, by the express permission of our own Government, that does not vary the case, since it involves no pledge that if illegally captured they shall be exempted from the ordinary operation of our laws. (Page 354.)

In the subsequent cases in this court this doctrine has not been departed from. *L'Invincible,* 1 Wheaton, 238, 258; *The Estrella,* 4 Wheaton, 298, 308, 9, 10, 11; *La Amistad de Rues,* 5 Wheaton, 385, 390.

It is insisted that these cases involve illegal captures at sea, or violations of neutral obligation, not arising because of the use of a port by sending in a captured vessel and keeping her there in violation of our rights as a neutral. But we are at a loss to see any difference in principle between such cases and breaches of neutrality of the character here involved in undertaking to make of an American port a depository of captured vessels with a view to keeping them there indefinitely. Nor can we consent to the insistence of counsel for appellant that the Prize Court of the German Empire has exclusive jurisdiction to determine the fate of the *Appam* as lawful prize. The vessel was in an American port and under our practice within the jurisdiction and possession of the District Court which had assumed to determine the alleged violation of neutral rights, with power to dispose of the vessel accordingly. The foreign tribunal under such circumstances could not oust the jurisdiction of the local court and thereby defeat its judgment. *The Santissima Trinidad, supra,* p. 355.

Were the rule otherwise than this court has frequently declared it to be, our ports might be filled in case of a general war such as is now in progress between the European countries, with captured prizes of one or the other of the belligerents, in utter violation of the prin-

ciples of neutral obligation which have controlled this country from the beginning.

The violation of American neutrality is the basis of jurisdiction, and the Admiralty Courts may order restitution for a violation of such neutrality. In each case the jurisdiction and order rests upon the authority of the courts of the United States to make restitution to private owners for violations of neutrality where offending vessels are within our jurisdiction, thus vindicating our rights and obligations as a neutral people.

It follows that the decree in each case must be

Affirmed.

CASE OF DESERTERS FROM THE PRUSSIAN FRIGATE *NIOBE*[1]

The provisions of the treaty of May 1, 1828, between the United States and Prussia, for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union and deserters from such vessels.

ATTORNEY GENERAL'S OFFICE,
August 19, 1868.

Sir: I have considered the opinion of the examiner of claims in your department, transmitted to me under cover of your letter of the 20th ultimo, upon the question, how far the treaty of 1828, between the United States and Prussia, on the subject of the arrest and imprisonment by the local authorities of each country of deserters from the ships of war and merchant vessels of the other, is obligatory upon the United States in respect to deserters from the public and private vessels sailing under the flag of the North German Union.

The result of the victory of Sadowa and the negotiations of Nicholsburg was the territorial enlargement of Prussia, by the annexation of Hesse Cassel, Nassau, Hanover, Holstein, and Frankfort, and the foundation of a confederation or union between Prussia, thus enlarged in territory and population, and the North German States, under a constitution of government which gave the King of Prussia the presidency of the union, with power to declare war and conclude peace, make treaties with foreign States, accredit ministers and receive them, likewise the command, in war and in peace, of the entire army and navy of the union, with power, whenever the public safety is threatened, to declare martial law in any part of the union.

Prussia has a treaty of commerce and navigation with the United States, dated May 1, 1828, which provides, that the consuls of the respective Governments "are authorized to require the assistance of

[1] *Official Opinions of the Attorneys General of the United States,* vol. 12, p. 463.

the local authorities for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country."

In April last application was made, under this provision of the treaty with Prussia, by the consul general of the North German Union in New York, to a United States commissioner, for a warrant for the arrest of eleven deserters from a public armed vessel, sailing under the flag of the union, which is styled by the minister of Prussia near this Government as "His majesty's frigate *Niobe*." The application of the consul general was refused by the commissioner, upon the general ground that the treaty stipulation referred to did not apply to vessels belonging to the North German Union. Baron Gerolt, the diplomatic representative here of the North German Union, protests against the refusal of the commissioner to issue a warrant for the arrest of these deserters; and hence the question is presented as to the validity of the objection urged by the commissioner to the right of the consular representative of the union to claim, on behalf of that Government, in respect to deserters from one of its public armed vessels, the benefits of the treaty of 1828. The examiner of claims, in the opinion you have transmitted to me, has discussed not only this question, which is practically the only one that has been raised, so far as I am informed, by any events that have actually transpired calling for a consideration of our treaty relations with the States of the North German Union, but also the larger question as to the effect of the change in the political status and relations of the States consolidated and confederated with Prussia, upon the stipulations in our treaties of commerce and navigation with Prussia and those other States, in respect to the seamen deserting from their merchant vessels now sailing under a common national flag. I fully concur in the conclusion of the law officer of your department, that the commissioner at New York erred in refusing to issue a warrant for the arrest of the deserting seamen of the frigate *Niobe*, but I will forbear at this time, with your permission, from giving an official opinion on the more doubtful and difficult questions which are discussed in the papers from your department now before me. It seems to me that a better occasion, perhaps, would be afforded for such a discussion when a case practically shall arise calling for the communication of the views of the Executive in regard to our treaties with the States of the North German Union to those judicial functionaries who, under our system of govern-

ment, are intrusted with the due fulfillment and execution of those treaties on the part of the United States, in respect to the subjects-matter particularly discussed by the examiner of claims.

In regard to naval vessels of the North German Union, I am clearly of opinion that they are the ships of war of Prussia, within the meaning of the treaty of 1828, and that deserters therefrom may be arrested by the proper local authorities of the United States, on the application of the proper consular officer of the union, pursuant to that treaty. I have referred incidentally to those provisions of the Constitution of the union, which declare as follows:

> The presidency of the union belongs to the Crown of Prussia. The Crown of Prussia is therefore entitled to represent the union as a nation, and to declare war and conclude peace in the name of the union, to form alliances and make other treaties with foreign States, accredit ministers and receive them.
>
> The aggregate land forces of the union shall form a single army, which, in war and peace, is placed under the command of His Majesty the King of Prussia, as commander-in-chief of the union.
>
> The entire navy of the union is under the command of Prussia. Its organization belongs to the King of Prussia, who appoints its officers and officials, who take the oath of allegiance to him.

The construction and effect given by the examiner of claims to these provisions of the constitution of the German Union seem to be well supported by the course of reasoning pursued in his opinion, and I content myself at present with an expression of satisfaction with his view as applied to the case to which your attention has been directed by Baron Gerolt.

I would not be understood as entertaining any objection to the recommendation which the law officer of your department has deemed necessary to make looking to a review of our treaties with the States of the North German Union. The relations of the States of North Germany to one another and to the United States have been so considerably modified by the confederation of 1867, that many perplexing questions of reciprocal rights and obligations are likely to arise under those various treaties, and those questions it may be deemed the part of good statesmanship to avoid, by new treaties adapted to the present condition of the North German States.

I desire to remark, in conclusion, that under our system stipulations for the apprehension, within our jurisdiction, of deserters from foreign

vessels, are executed by officers of the judicial department of the Government, in virtue of special authority conferred by acts of Congress. The questions arising upon the interpretation and effect of such treaties must, therefore, be peculiarly and primarily questions of judicial cognizance and consideration. The act of March 2, 1829, authorizes any court, judge, justice, or other magistrate, having competent power, to issue warrants for the arrest, for examination, of seamen deserting from the vessels of any foreign Governments with whom we have treaties for the restoration of deserting seamen, upon the application of the consular officers of such Governments, with authority to deliver up such seamen to such consular officers. The subsequent act of February 24, 1855, confers upon commissioners of the Circuit Courts of the United States similar authority. The officers named in these statutes are not subject to the control or direction of the executive department of the Government.

Applications for the apprehension of deserting seamen are made to them directly by the consuls of foreign Governments, and it may well occur that such applications are disposed of summarily, and before any opportunity can arise for intervention by the diplomatic representative of the foreign Government, or the political department of our own Government. It may be of the highest consequence, that in a case involving the construction of such a treaty, full opportunity should be afforded both this and the foreign Government for the presentation of their views upon the subject to the judicial functionary the exercise of whose jurisdiction has been invoked in the particular case. I apprehend that the learned commissioner, who refused to issue his warrant in the case of the seamen of the *Niobe*, would have taken a different view of the treaty in question if his attention had been particularly called to those provisions of the constitution of the North German Union which I have referred to.

It may be proper, in case you agree with the view I have taken of that treaty in respect to public armed vessels under the flag of the North German Union, to make the district attorney of the United States at New York acquainted with your opinion, and to give such instructions to that officer as will enable him to make proper representation of that opinion to the commissioner or other judicial functionary in any future case of like character, and to advise your department of the occurrence of other cases arising under our treaties with

the States of the North German Union that may call for renewed consideration of the subject by your department.

I am, sir, very respectfully,

Your obedient servant,

WM. M. EVARTS.

HON. WM. H. SEWARD,
Secretary of State.

TONNAGE DUTY[1]

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act of June 26, 1884, chapter 121, and entered in our ports, is purely geographical in character, inuring to the advantage of any vessel of any Power that may choose to transport between this country and any port embraced by the fourteenth section of that act.

DEPARTMENT OF JUSTICE,
September 19, 1885.

Sir: Your communication of the 8th September, instant, with the inclosures therein referred to, has received my deliberate consideration, and I have the honor to submit, in reply, that I agree with you entirely in the interpretation you place on the fourteenth section of the act of Congress of the 26th June, 1884, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," and in your conclusion that the claims set up by the several Powers mentioned by you are not, founded.

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act and entered in our ports is, I think, purely geographical in character, inuring to the advantage of *any* vessel of *any* Power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act.

I see no warrant, therefore, to claim that there is anything in "the most favored nation" clause of the treaty between this country and the Powers mentioned that entitles them to have the privileges of the four-

---

[1] *Official Opinions of the Attorneys General of the United States,* vol. 18, p. 260. For the diplomatic correspondence, see *post,* p. 151. See also the case of *North German Lloyd S. S. Co.* v. *Hedden, ante,* p. 100.

teenth section extended to their vessels sailing to this country from ports outside the limitation of the act.

Your able and comprehensive discussion of the subject renders it quite unnecessary for me to treat it at large.

I have the honor to be, your most obedient servant,

W. A. MAURY,
Acting Attorney General.

THE SECRETARY OF STATE.

DUTY—IMPORTED SALT—TREATY WITH PRUSSIA[1]

The treaty of May 1, 1828, between the United States and the Kingdom of Prussia, is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia. *Semble,* that it is not effective as regards the rest of that Empire.

The "most favored nation clause" in that treaty is not violated by paragraph 608 of the tariff act of August 27, 1894, laying a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States.

In case of conflict between a treaty and a subsequent statute, the latter governs.

The laws of a foreign country are not known to the attorney general, but are facts to be proved by competent evidence.

As to when the discriminating duty aforesaid applies to a country which imposes a duty on salt exported from the United States but lays a countervailing excise tax on domestic salt. *Quære.*

DEPARTMENT OF JUSTICE,
November 13, 1894.

Sir: I have the honor to acknowledge your communication of October 27, asking my official opinion upon the question whether salt imported from the Empire of Germany is dutiable under paragraph 608 of the tariff act of August 27, 1894. That paragraph, which puts salt in general on the free list, contains the following proviso:

> *Provided,* That if salt is imported from any country whether independent or a dependency which imposes a duty upon salt exported from the United States, then there shall be levied, paid, and collected upon such salt the rate of duty existing prior to the passage of this act.

---

[1] *Official Opinions of the Attorneys General of the United States,* vol. 21, p. 80.

As Germany imposes a duty upon salt exported from the United States, German salt is apparently subject to the proviso just quoted. The German ambassador, however, claims it is entitled to come into the United States free on two grounds.

One is the "most favored nation clause," so called, which is embodied in the following provisions of the treaty of May 1, 1828, between the United States and Prussia:

ARTICLE 5

> No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. . . .

ARTICLE 9

> If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

It should be noted that while this treaty is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia no facts or considerations with which I have been made acquainted justify the assumption that it is to be taken as effective as regards other portions of the Empire. Neither am I informed whether the German salt, for which free admission into this country is demanded, is a product or manufacture of Prussia proper, or of some other part or parts of the German Empire.

If it be assumed, however, for present purposes, that the treaty of 1828 binds the United States as regards all the constituent parts of the German Empire, the claim of the German ambassador, founded upon the "most favored nation clause," must be pronounced untenable for at least two conclusive reasons.

In the first place, the "most favored nation clauses" of our treaties with foreign Powers have, from the foundation of our Government, been invariably construed both as not forbidding any internal regula-

tions necessary for the protection of our home industries, and as permitting commercial concessions to a country which are not gratuitous, but are in return for equivalent concessions, and to which no other country is entitled except upon rendering the same equivalents. Thus, Mr. Jefferson, when Secretary of State in 1792, said of treaties exchanging the rights of the most favored nation that "they leave each party free to make what internal regulations they please, and to give what preference they find expedient to native merchants, vessels, and productions." In 1817 Mr. John Quincy Adams, acting in the same official capacity, took the ground that the "most favored nation clause only covered gratuitous favors and did not touch concessions for equivalents expressed or implied." Mr. Clay, Mr. Livingston, Mr. Evarts, and Mr. Bayard, when at the head of the Department of State, have each given official expression to the same view. It has also received the sanction of the Supreme Court in more than one well-considered decision, while in *Bartram* v. *Robertson* (122 U. S. 116), Mr. Justice Field, speaking for the whole court, expounded the stipulations of the "most favored nation clause" in this language (p. 120):

> They were pledges of the two contracting parties, the United States and the King of Denmark, to each other, that, in the imposition of duties on goods imported into one of the countries which were the produce or manufacture of the other, there should be no discrimination against them in favor of goods of like character imported from any other country. They imposed an obligation upon both countries to avoid hostile legislation in that respect.

This interpretation of the "most favored nation clause," so clearly established as a doctrine of American law, is believed to accord with the interpretation put upon the clause by foreign Powers—certainly by Germany and Great Britain. Thus, as the clause permits any internal regulations that a country may find necessary to give a preference to "native merchants, vessels, and productions," the representatives of both Great Britain and Germany expressly declared, at the International Sugar Conference of 1888, that the export sugar bounty of one country might be counteracted by the import sugar duty of another without causing any discrimination which could be deemed a violation of the "most favored nation clause." So both Germany and Great Britain acquiesced in the position of the United States, that our treaty with Hawaii did not entitle those nations to equal privileges in regard

to imports with those thus obtained by the United States, the privileges granted to the United States being in consideration of concessions by the United States which Germany and Great Britain not only did not offer to make, but, in the nature of things, could not make.

If these established principles be applied to the case in hand but one result seems to be possible. The form which the provisions of our recent tariff act relating to salt may have assumed is quite immaterial. It enacts, in substance and effect, that any country admitting American salt free shall have its own salt admitted free here, while any country putting a duty upon American salt shall have its salt dutiable here under the preexisting statute. In other words, the United States concedes "free salt" to any nation which concedes "free salt" to the United States. Germany, of course, is entitled to that concession upon returning the same equivalent. But otherwise she is not so entitled, and there is nothing in the "most favored nation clause" which compels the United States to discriminate against other nations and in favor of Germany by granting gratuitously to the latter privileges which it grants to the former only upon the payment of a stipulated price.

In the next place, even if the provisions of our recent tariff act under consideration could be deemed to contravene the "most favored nation clause" of the treaty with Germany—as they can not be for the reasons stated—the result will be the same. The tariff act is a statute later than the treaty and, so far as inconsistent with it, is controlling. The principle is too well settled to admit of discussion, and if any relief from its operations is desirable it can be obtained only through proper modifying legislation by Congress.

While the first proposition of the German ambassador proceeds upon the basis that Germany does levy an import duty on American salt, his second proposition is that in reality it does not do so. The duty, it is said, should be regarded as in fact an internal excise tax, since a tax equivalent to the duty is levied upon all salt in the country whenever and however it appears, and is the same upon salt produced in Germany as upon salt coming from the United States. It is matter of convenience merely that the tax upon American salt is collected immediately upon its arrival in port. In short, the claim is that there is no discrimination against American salt, which is the evil our statute aims to prevent; that American salt and German salt are in reality treated on a footing of entire equality.

The validity of this proposition I do not think I am in a position to judge of, for want of sufficient data. The laws of Germany I do not and can not be expected to know, and, like other foreign laws, are facts to be proved by competent evidence. The statement respecting them made by the German ambassador in a communication to the Secretary of State (copy of which you inclose) are undoubtedly correct, but they leave me in doubt upon what seems to me a vital point, viz., whether the internal excise tax on salt referred to is imperial in character—that is, is levied by and belongs to the Imperial Government—or is local, and is levied by and belongs to one or more constituent States of the Empire. If it is of the latter character, it probably can not be considered in relation to the matter in hand any more than a like domestic tax of any one or more of the States of the United States could be considered in the same relation. If, however, it could be considered under any circumstances, then it is obviously material to know whether such tax is levied by all of the constituent States of the Empire, without exception, and actually or necessarily at the same rate.

As at present advised, therefore, salt imported from the Empire of Germany is, in my judgment, legally dutiable under the statute above quoted.

Respectfully, yours,

RICHARD OLNEY.

THE SECRETARY OF THE TREASURY.

Extracts from a Proclamation by the President of the United States, August 22, 1870[1]

Whereas a state of war unhappily exists between France on the one side and the North German Confederation and its allies on the other side; and

Whereas the United States are on terms of friendship and amity with all the contending Powers and with the persons inhabiting their several dominions; and

Whereas great numbers of the citizens of the United States reside within the territories or dominions of each of the said belligerents and carry on commerce, trade, or other business or pursuits therein, protected by the faith of treaties; and

Whereas great numbers of the subjects or citizens of each of the said belligerents reside within the territory or jurisdiction of the United States and carry on commerce, trade, or other business or pursuits therein; and

Whereas the laws of the United States, without interfering with the free expression of opinion and sympathy, or with the open manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest:

Now, therefore, I, Ulysses S. Grant, President of the United States, in order to preserve the neutrality of the United States and of their citizens and of persons within their territory and jurisdiction, and to enforce their laws, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf and of the law of nations, may thus be prevented from an unintentional violation of the same, do hereby declare and proclaim that by the act passed on the 20th day of April, A. D. 1818, commonly known as the "neutrality law," the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit: . . .

And I do further declare and proclaim that by the nineteenth article

---

[1] Richardson: *Messages and Papers of the Presidents,* vol. 7, p. 86; *U. S. Statutes at Large,* vol. 16, p. 1132.

of the treaty of amity and commerce which was concluded between His Majesty the King of Prussia and the United States of America on the 11th day of July, A. D. 1799, which article was revived by the treaty of May 1, A. D. 1828, between the same parties, and is still in force, it was agreed that

> the vessels of war, public and private, of both parties shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to show.

And I do further declare and proclaim that it has been officially communicated to the Government of the United States by the Envoy Extraordinary and Minister Plenipotentiary of the North German Confederation at Washington that private property on the high seas will be exempted from seizure by the ships of His Majesty the King of Prussia, without regard to reciprocity.

. . . . . .

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

[SEAL] Done at the city of Washington, this 22d day of August, A. D. 1870, and of the Independence of the United States of America the ninety-fifth.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

Diplomatic Correspondence

Tonnage Dues[1]

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,
Washington, August 3, 1885 (Received August 5).

The undersigned, Imperial German Ambassador Extraordinary and Minister Plenipotentiary, has, in accordance with the orders he has received, the honor to make the following very respectful communication to Hon. Thomas F. Bayard, Secretary of State of the United States.

By a law of June 26, 1884 (an act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes), section 14 (tonnage tax), it has been provided that vessels which sail from a port in North or Central America, in the West Indian Islands, the Bahama, Bermuda, and Sandwich Islands, to a port of the United States, shall pay in it, in place of the previous tonnage tax of 30 cents per ton a year, only 3 cents per ton, and not more than 15 cents a year, whilst vessels from other foreign ports have to bear a tax of 6 cents. This lowering of the tax to 3 cents has been granted to the favored countries—Canada, Newfoundland, the Bahamas, Bermuda, and West Indian Islands, Mexico, and Central America, including Panama and Aspinwall—unconditionally and without regard to the taxes, however relatively high, these countries on their side levy on American ships.

Article 9 of the Prussian-American treaty of the 1st of May, 1828, which has been lately in the correspondence between the cabinets of Berlin and Washington concerning the petroleum railroad rates as well as because of the Spanish-American treaty concerning the trade of Cuba and Puerto Rico, successively asserted by both Governments to be valid for all Germany, runs as follows:

> If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately

[1] *Foreign Relations of the United States*, 1888, part 2, pp. 1872–1878. See *ante*, pp. 100, 141.

become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

The treaties which the United States in their time have concluded with the Hanse cities, Oldenburg and Mecklenburg, contain similar provisions. In accordance with the purport of these, Germany has an immediate claim, and without making any concession in return, to participate in the enjoyment of the tonnage tax abatement to 3 cents per ton, which has been unconditionally conceded.

The undersigned is, in accordance with the view of the Imperial Government above set forth, directed to claim from the Government of the United States for German vessels the abatement of the tonnage tax to 3 cents per ton, and to propose, at the same time, the repayment of the tonnage tax which at the rate of 6 cents per ton has been overpaid since the law of the 26th of June, 1884, went into effect.

While the undersigned reserves for himself the right to make in due time proper proposals in reference to the abatement provided over and above this in the law of the 26th June of last year, dependent on certain conditions, and which (abatement) may in the future even exceed that of 3 cents per ton, according to the result of proper inquiries concerning the tonnage dues and other taxes hereafter to be levied in German harbors, he has the honor to request very respectfully that the Secretary of State will kindly take the proper course, so that German shipping may as soon as possible participate in the unconditional favor, to which it is entitled, of an abatement of the tonnage tax to 3 cents.

The undersigned has the honor to await, very respectfully, your kind answer in reference to this matter, and avails himself, etc.

H. v. ALVENSLEBEN.

Mr. Bayard to Mr. von Alvensleben

DEPARTMENT OF STATE,
Washington, November 7, 1885.

Sir: I had the honor to receive in due season your note of August 3 last, touching the application of the provisions of the fourteenth section of the shipping act, approved June 26, 1884, in respect of the

collection of tonnage tax to vessels of Germany coming from ports of that country to ports of the United States, under the most favored nation clause of the existing treaty of 1828 between the United States and Germany.

The importance of the questions involved in the claim of the German Government and in like claims preferred by other Governments has led to the submission of the entire subject to the judgment of the attorney general.

The conclusions of the Department of Justice, after a careful examination of the premises, are that—

> The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act and entered in our ports is, I think, purely geographical in character, inuring to the advantage of *any* vessel of *any* Power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act. I see no warrant, therefore, to claim that there is anything in "the most favored nation" clause of the treaty between this country and the Powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitation of the act.

These conclusions are accepted by the President, and I have, accordingly, the honor to communicate them to you, as fully covering the points presented in your note of August 3 last.

Accept, etc.

T. F. Bayard.

Count Leyden to Mr. Bayard

[Translation]

Imperial German Legation,

Washington, November 17, 1885 (Received November 19).

Mr. Secretary of State:

I have the honor most respectfully to acknowledge the receipt of your polite note of the 7th instant, whereby you inform me that the Department of Justice of the United States has decided in the matter of the application of the provisions of section 14 of the act relative

to navigation of June 26, 1884 to German vessels, that the reduction of tonnage duties which is provided for a specified region is of a purely geographical character, and that the most favored nation clause can consequently have no application in this case.

I have the honor, at the same time, to inform you that I have brought the contents of your aforesaid note to the notice of the Imperial Government.

Accept, etc.,

COUNT LEYDEN.

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,

Washington, February 16, 1886 (Received February 18).

MR. SECRETARY OF STATE:

The Imperial Government has seen by your note of November 7, 1885, relative to the enforcement of the provisions of section 14 of the navigation act of June 26, 1884, that the United States Government rejects the application (made on the basis of the most favored nation treaties now existing with Prussia and the German States) for equal rights with the States of North and Central America and the West Indies. This rejection is based on the ground that that exemption which is granted to all vessels of all Powers sailing between the countries in question and the United States is purely geographical in its character, and can not, therefore, be claimed by other States in view of the most favored nation clause.

I am instructed, and I have the honor most respectfully to reply to this, that such a line of argument is a most unusual one, and is calculated to render the most favored nation clause wholly illusory. On the same ground, it would be quite possible to justify, for instance, a privilege granted exclusively to the South American States, then one granted also to certain of the nearer European nations, so that finally, under certain circumstances, always on the pretext that the measure was one of a purely geographical character, Germany alone, among all the nations that maintain commercial relations with America, notwith-

standing the most favored nation right granted to that country by treaty, might be excluded from the benefits of the act.

It can not be doubted, it is true, that on grounds of purely local character certain treaty stipulations between two Powers, or certain advantages autonomically granted, may be claimed of third States not upon the ground of a most favored nation clause. Among these are included facilities in reciprocal trade on the border, between States whose territories adjoin each other. It is, however, not to be doubted that the international practice is that such facilities, not coming within the scope of a most favored nation clause, are not admissible save within very restricted zones. In several international treaties these zones are limited to a distance of ten kilometers from the frontier. From this point of view, therefore, the explanation given by the United States Government of section 14 of the shipping act can not be justified.

This law grants definite advantages to entire countries, among others to those situated at a great distance from the United States; these advantages are, beyond a doubt, equivalent to facilities granted to the trade and navigation of those countries, even if they do, under certain circumstances, inure to the benefit of individual vessels of foreign nations. It scarcely need be insisted upon that these advantages favor the entire commerce of the countries specially designated in the act, since they are now able to ship their goods to the United States on terms that have been artificially rendered more favorable than those on which other countries not thus favored are able to ship theirs.

The treaty[1] existing between Prussia and the United States expressly stipulates that—

> If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

Such a compensation, so far as the reduction of the tonnage tax to 3 cents is concerned, has not been stipulated for by the United States in the aforesaid shipping act. Germany is, therefore, *ipso facto,* entitled to the reduction of the tax in favor of vessels sailing from Germany to the United States, especially since, according to the constitution of

[1] Treaty of 1828, Art. 9 [*ante,* p. 56].

the Empire, no tonnage tax is collected in Germany from foreign vessels; that is to say, no tonnage tax of the character of American tonnage taxes in the sense of section 8, paragraph 1, Article 1, of the American Constitution, viz., those designed to pay the debts of the Government and to pay the expenses of the common defense and the general welfare.

As you remark in your esteemed note, Mr. Secretary of State, you have based your decision on an opinion of the attorney general. In opposition to this view, it will be seen by the printed decisions of the Secretary of Treasury, that the latter, in an opinion on this subject addressed to the Department of State under date of May 11, 1885, expressed the opinion that vessels sailing from Portugal to the United States are, indeed, entitled to the privileges granted by section 14 of the shipping act, on the ground of the most favored nation treaty existing between the two nations. This opinion harmonizes in the main with the view entertained by the Imperial Government.

The Imperial Government entertains the hope, in view of the foregoing considerations, that the United States Government on reconsidering this matter will not maintain the position taken in the note of November 7, 1885, and that it will grant to German vessels sailing between the two countries the same privileges that have long been granted without compensation by the German Empire to American vessels.

In having the honor, therefore, hereby to reiterate the application made in my note of August 3, 1885, for the reduction of the tonnage tax to 3 cents in favor of vessels engaged in trade between Germany and the United States, I hope that the decision of the United States Government in this matter will be kindly communicated to me.

Accept, etc.,

H. v. Alvensleben.

Mr. Bayard to Mr. von Alvensleben

Department of State,

Washington, March 4, 1886.

Sir: With reference to previous correspondence on the subject, I have the honor to acknowledge the receipt of your note of the 15th ultimo, relative to the question as to the applicability of the most

favored nation clauses of the treaties of Prussia and other German States and the United States to the provisions of section 14 of the act of Congress of June 26, 1884.

In reply I beg to inform you that your note will have consideration, it being sufficient for the present to observe that Germany admits that neighborhood and propinquity justify a special treatment of intercourse which may not be extended to other countries under the favored nation clause in treaties with them, and only appears to question the distance within which the rule of neighborhood is to operate.

Accept sir, etc.,

T. F. BAYARD.

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,

Washington, August 1, 1886 (Received August 2).

MR. SECRETARY OF STATE:

I had the honor duly to receive your note of the 4th of March last, whereby you informed me that my observations concerning the applicability of the most favored nation clause to section 14 of the act of Congress of June 26, 1884, would be taken into consideration, and in which, for the time being, you confined yourself, by way of reply, to one remark.

In the mean time an act of Congress entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," has been approved by the President of the United States under date of June 19, 1886 (Public—No. 85), and has thereby become a law. I have brought this act to the notice of the Imperial Government and have been instructed to state the view taken by that Government of this latest law and to ask your attention to its incompatibility with the stipulations of the treaty exising between Germany and the United States.

This act extends, in a measure, the power conferred upon the President by section 14 of the act of June 26, 1884, to diminish tonnage dues in certain cases.

According to the act of 1884 the President was authorized, only in

the case of vessels coming from the ports of North and Central America, the West Indies, the Bahama, Bermuda, and Sandwich Islands, or Newfoundland, and entering ports of the United States, to reduce the duty of 3 cents per ton, which was imposed on such vessels, provided that the said duty exceeded the dues which American vessels were obliged to pay in the aforesaid ports.

A reduction of the duty of 6 cents, to which all vessels coming from other ports were subjected, was not allowable, even on the supposition in question.

Vessels from the aforesaid favored ports thus enjoyed a special preference in two ways: In the first place, they paid in all cases a duty of but 3 cents per ton, while vessels from other ports were obliged to pay 6 cents per ton; even these 3 cents could be remitted, either in whole or in part, provided that it could be shown that the duty paid by American vessels in the ports concerned amounted to less than 3 cents per ton, or that no such duty was levied in said ports. This latter privilege is, according to the new law, no longer to be exclusively enjoyed by vessels from the favored ports.

Likewise, vessels from other than the most favored ports may obtain a reduction or return of the duty of 6 cents to be paid by them per ton, provided that in the ports from which they have come American vessels pay less than 6 cents or no tonnage duty at all. The amount of the duty to be remitted is computed according to the amount of the duties levied in the ports of departure.

The new law is evidently based upon the idea of reciprocity. If this idea had been consistently carried out no objection could be made to it and the Imperial Government would have no further ground of complaint. This, however, is not the case, inasmuch as the new law grants special privileges, as did the old, to vessels from the above-mentioned ports, declaring that they, without any compensation on their part, shall pay but 3 cents per ton, even though a duty in excess of that amount is paid by American vessels in the ports concerned. The number of favored ports is even extended to those of South America bordering on the Caribbean Sea.

The Imperial Government has from the outset protested against this one sided privilege, which is in violation of the treaty stipulations of Germany with the United States. Since this privilege is not only not abolished by the new law, but is confirmed and even still further extended, the original attitude assumed by the Imperial Government

towards the old law has been in no wise changed by the new act, and the Imperial Government must continue to protest against the violations of its treaty rights while maintaining the arguments contained in my note of February 15, 1886. As long as vessels from the ports of North and Central America pay but one-half the tonnage duty that is levied upon vessels from German ports, without being required to furnish proof that less than 6 cents is exacted from American vessels in their ports, the Imperial Government will be obliged to maintain its claim for similar usage, viz., the exemption from furnishing such proof.

As is stated in my note of February 15, 1886, the Imperial Government is unable to regard as conclusive your principal argument, viz., that the privilege in question is of a purely geographical character, because the effect of this privilege is to benefit, in point of fact, the entire trade and navigation of those countries in which the ports in question are situated. No paramount importance can be attached (as is done by the United States Government) to the mere form in which this privilege is granted to particular countries.

I am therefore instructed, on the ground of the treaty right pertaining to the Imperial Government, to reiterate its previous claim that German ports shall be placed on a footing precisely similar to that of North and Central American ports, etc., and most respectfully to request you, Mr. Secretary of State, to favor me with the further reply which, in your note of March 4, you gave me to understand that I might expect from you.

Accept, etc.,

H. v. Alvensleben.

Case of the William P. Frye[1]

The Secretary of State to Ambassador Gerard

[Telegram]

No 1446.]

DEPARTMENT OF STATE,

Washington, March 31, 1915.

You are instructed to present the following note to the German Foreign Office:

Under instructions from my Government I have the honor to present a claim for $228,059.54, with interest from January 28, 1915, against the German Government on behalf of the owners and captain of the American sailing vessel *William P. Frye* for damages suffered by them on account of the destruction of that vessel on the high seas by the German armed cruiser *Prinz Eitel Friedrich*, on January 28, 1915.

The facts upon which this claim arises and by reason of which the German Government is held responsible by the Government of the United States for the attendant loss and damages are briefly as follows:

The *William P. Frye*, a steel sailing vessel of 3,374 tons gross tonnage, owned by American citizens and sailing under the United States flag and register, cleared from Seattle, Wash., November 4, 1914, under charter to M. H. Houser, of Portland, Oreg., bound for Queenstown, Falmouth, or Plymouth for orders, with a cargo consisting solely of 186,950 bushels of wheat owned by the aforesaid Houser and consigned "unto order or to its assigns," all of which appears from the ship's papers which were taken from the vessel at the time of her destruction by the commander of the German cruiser.

On January 27, 1915, the *Prinz Eitel Friedrich* encountered the *Frye* on the high seas, compelled her to stop, and sent on board an armed boarding party, who took possession. After an examination of the ship's papers the commander of the cruiser directed that the cargo be thrown overboard, but subsequently decided to destroy the vessel, and on the following morning, by his order, the *Frye* was sunk.

The claim of the owners and captain consists of the following items:

Value of ship, equipment, and outfit	$150,000.00
Actual freight as per freight list, 5034 1000/2240 tons at 32-6—£8180-19-6 at $4.86	39,759.54

[1] Official Print of the Department of State.

Traveling and other expenses of Capt. Kiehne and Arthur Sewall & Co., agents of ship, in connection with making affidavits, preparing and filing claim.....	$500.00
Personal effects of Capt. H. H. Kiehne.....	300.00
Damages covering loss due to deprivation of use of ship..	37,500.00
Total	$228,059.54

By direction of my Government, I have the honor to request that full reparation be made by the German Government for the destruction of the *William P. Frye* by the German cruiser *Prinz Eitel Friedrich.*

BRYAN.

Ambassador Gerard to the Secretary of State

No. 1984.]

AMERICAN EMBASSY,
Berlin, April 5, 1915.

The following is translation of the reply of the Foreign Office to my note of April 3:

GERMAN FOREIGN OFFICE,
Berlin, April 5, 1915.

The undersigned has the honor to make reply to the note of his Excellency, Mr. James W. Gerard, Ambassador, the United States of America, dated the 3d instant, foreign office No. 2892, relative to claims for damages for the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich.*

According to the reports which have reached the German Government the commander of the *Prinz Eitel Friedrich* stopped the *William P. Frye* on the high seas January 27, 1915, and searched her. He found on board a cargo of wheat consigned to Queenstown, Falmouth, or Plymouth to order. After he had first tried to remove the cargo from the *William P. Frye* he took the ship's papers and her crew on board and sank ship.

It results from these facts that the German commander acted quite in accordance with the principles of international law as laid down in the Declaration of London and the German prize ordinance. The ports of Queenstown, Falmouth, and Plymouth, whither the ship visited was bound, are strongly fortified English coast places, which, moreover, serve as bases for the British naval forces. The cargo of wheat being food or foodstuffs, was conditional contraband within the meaning of Article 24, No. 1, of the Declaration of London, and Article 23, No. 1, of the German prize ordinance, and was therefore to be

considered as destined for the armed forces of the enemy, pursuant to Articles 33 and 34 of the Declaration of London and Articles 32 and 33 of the German prize ordinance, and to be treated as contraband pending proof of the contrary. This proof was certainly not capable of being adduced at the time of the visiting of the vessel, since the cargo papers read to order. This, however, furnished the conditions under which, pursuant to Article 49 of the Declaration of London and Article 113 of the German prize ordinance the sinking of the ship was permissible, since it was not possible for the auxiliary cruiser to take the prize into a German port without involving danger to its own security or the success of its operations. The duties devolving upon the cruiser before destruction of the ship, pursuant to Article 50 of the Declaration of London and Article 116 of the German prize ordinance, were fulfilled by the cruiser in that it took on board all the persons found on the sailing vessel, as well as the ship's papers.

The legality of the measures taken by the German commander is furthermore subject to examination by the German Prize Court pursuant to Article 51 of the Declaration of London and section 1, No. 2, of the German Code of Prize Procedure. These prize proceedings will be instituted before the Prize Court at Hamburg as soon as the ship's papers are received and will comprise the settlement of questions whether the destruction of the cargo and the ship was necessary within the meaning of Article 49 of the Declaration of London; whether the property sunk was liable to capture; and whether, or to what extent, indemnity is to be awarded the owners. In the trial the owners of ship and cargo would be at liberty, pursuant to Article 34, paragraph 3, of the Declaration of London, to adduce proof that the cargo of wheat had an innocent destination and did not, therefore, have the character of contraband. If such proof is not adduced, the German Government would not be liable for any compensation whatever, according to the general principles of international law.

However, the legal situation is somewhat different in the light of the special stipulations applicable to the relations between Germany and the United States since Article 13 of the Prussian-American treaty of friendship and commerce of July 11, 1799, taken in connection with Article 12 of Prussian-American treaty of commerce and navigation of May 1, 1828, provides that contraband belonging to the subjects or citizens of either party can not be confiscated by the other in any case but only detained or used in consideration of payment of the full value of the same. On the ground of this treaty stipulation which is as a matter of course binding on the German Prize Court the American owners of ship and cargo would receive compensation even if the court should declare the cargo of wheat to be contraband. Nevertheless the approaching prize proceedings are not rendered superfluous since the competent Prize Court must examine into the legality of the

capture and destruction and also pronounce upon the standing of the claimants and the amount of indemnity.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government and avails himself, etc.

(Signed) JAGOW.

April 4, 1915.

GERARD.

The Secretary of State to Ambassador Gerard

No. 1583.]

DEPARTMENT OF STATE,
Washington, April 28, 1915.

You are instructed to present the following note to the German Foreign Office:

In reply to your Excellency's note of the 5th instant, which the Government of the United States understands admits the liability of the Imperial German Government for the damages resulting from the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich* on January 28 last, I have the honor to say, by direction of my Government, that while the promptness with which the Imperial German Government has admitted its liability is highly appreciated, my Government feels that it would be inappropriate in the circumstances of this case, and would involve unnecessary delay to adopt the suggestion in your note that the legality of the capture and destruction, the standing of the claimants, and the amount of indemnity should be submitted to a Prize Court.

Unquestionably the destruction of this vessel was a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia, and the United States Government, by virtue of its treaty rights, has presented to the Imperial German Government a claim for indemnity on account of the resulting damages suffered by American citizens. The liability of the Imperial German Government and the standing of the claimants as American citizens and the amount of indemnity are all questions which lend themselves to diplomatic negotiation between the two Governments, and happily the question of liability has already been settled in that way. The status of the claimants and the amount of the indemnity are the only questions remaining to be settled, and it is appropriate that they should be dealt with in the same way.

The Government of the United States fully understands that, as stated in your Excellency's note, the German Government is liable under the treaty provisions above mentioned for the damages arising from the destruction of the cargo as well as from the destruction of

the vessel. But it will be observed that the claim under discussion does not include damages for the destruction of the cargo, and the question of the value of the cargo therefore is not involved in the present discussion.

The Government of the United States recognizes that the German Government will wish to be satisfied as to the American ownership of the vessel, and the amount of the damages sustained in consequence of her destruction.

These matters are readily ascertainable and if the German Government desires any further evidence in substantiation of the claim on these points in addition to that furnished by the ship's papers, which are already in the possession of the German Government, any additional evidence found necessary will be produced. In that case, however, inasmuch as any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined in the United States than elsewhere, on account of the presence there of the owners and captain of the *William P. Frye* and their documentary records, and other possible witnesses, the Government of the United States ventures to suggest the advisability of transferring the negotiations for the settlement of these points to the Imperial German Embassy at Washington.

In view of the admission of liability by reason of specific treaty stipulations, it has become unnecessary to enter into a discussion of the meaning and effect of the Declaration of London, which is given some prominence in your Excellency's note of April 5, further than to say that, as the German Government has already been advised, the Government of the United States does not regard the Declaration of London as in force.

BRYAN.

Ambassador Gerard to the Secretary of State

[Telegram]

No. 2391.]

AMERICAN EMBASSY,
Berlin, June 7, 1915.

The following is the text of the reply of the German Government in the *Frye* case:

The undersigned has the honor to make the following reply to the note of his Excellency Mr. James W. Gerard, Ambassador of the United States of America, dated April 30, 1915 (F. O. No. 3291), on the subject of the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich:*

The German Government can not admit that, as the American Government assumes, the destruction of the sailing vessel mentioned constitutes a violation of the treaties concluded between Prussia and the United States at an earlier date and now applicable to the relations between the German Empire and the United States or of the American rights derived therefrom. For these treaties did not have the intention of depriving one of the contracting parties engaged in war of the right of stopping the supply of contraband to his enemy when he recognizes the supply of such articles as detrimental to his military interests. On the contrary, Article 13 of the Prussian-American Treaty of July 11, 1799, expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it. As a matter of course, the obligation of the party at war to pay compensation to the interested persons of the neutral contracting party remains in force whatever be the manner of stopping the supply.

According to general principles of international law, any exercise of the right of control over the trade in contraband is subject to the decision of the Prize Courts, even though such right may be restricted by special treaties. At the beginning of the present war Germany, pursuant to these principles, established by law prize jurisdiction for cases of the kind under consideration. The case of the *William P. Frye* is likewise subject to the German prize jurisdiction, for the Prussian-American Treaties mentioned contain no stipulation as to how the amount of the compensation provided by Article 13 of the treaty cited is to be fixed. The German Government, therefore, complies with its treaty obligations to a full extent when the Prize Courts instituted by it in accordance with international law proceed in pursuance of the treaty stipulations and thus award the American interested persons equitable indemnity. There would, therefore, be no foundation for a claim of the American Government, unless the Prize Courts should not grant indemnity in accordance with the treaty; in such an event, however, the German Government would not hesitate to arrange for equitable indemnity notwithstanding. For the rest, prize proceedings in the case of the *Frye* are indispensable, apart from the American claims, for the reason that other claims of neutral and enemy interested parties are to be considered in the matter.

As was stated in the note of April 4 last, the Prize Court will have to decide the questions whether the destruction of the ship and cargo was legal; whether and under what conditions the property sunk was liable to confiscation, and to whom and in what amount indemnity is to be paid provided application therefor is received. Since the decision of the Prize Court must first be awaited before any further position is taken by the German Government, the simplest way for the American

interested parties to settle their claims would be to enter them in the competent quarter in accordance with the provisions of the German Code of Prize Procedure.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government, and avails himself at the same time of the opportunity to renew the assurances of his most distinguished consideration.

(Signed) V. JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

No. 1868.]

DEPARTMENT OF STATE,
Washington, June 24, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

I have the honor to inform your Excellency that I duly communicated to my Government your note of the 7th instant on the subject of the claim presented in my note of April 3d last, on behalf of the owners and captain of the American sailing vessel *William P. Frye* in consequence of her destruction by the German auxiliary cruiser *Prinz Eitel Friedrich.*

In reply I am instructed by my Government to say that it has carefully considered the reasons given by the Imperial German Government for urging that this claim should be passed upon by the German Prize Court instead of being settled by direct diplomatic discussion between the two Governments, as proposed by the Government of the United States, and that it regrets to find that it can not concur in the conclusions reached by the Imperial German Government.

As pointed out in my last note to you on this subject, dated April 30, the Government of the United States has considered that the only question under discussion was the method which should be adopted for ascertaining the amount of the indemnity to be paid under an admitted liability, and it notes with surprise that in addition to this question the Imperial German Government now desires to raise some questions as to the meaning and effect of the treaty stipulations under which it has admitted its liability.

If the Government of the United States correctly understands the position of the Imperial German Government as now presented, it is that the provisions of Article 13 of the treaty of 1799 between the United States and Prussia, which is continued in force by the treaty

of 1828, justified the commander of the *Prinz Eitel Friedrich* in sinking the *William P. Frye,* although making the Imperial German Government liable for the damages suffered in consequence, and that inasmuch as the treaty provides no specific method for ascertaining the amount of indemnity to be paid, that question must be submitted to the German Prize Court for determination.

The Government of the United States, on the other hand, does not find in the treaty stipulations mentioned any justification for the sinking of the *Frye,* and does not consider that the German Prize Court has any jurisdiction over the question of the amount of indemnity to be paid by the Imperial German Government on account of its admitted liability for the destruction of an American vessel on the high seas.

You state in your note of the 7th instant that Article 13 of the above-mentioned treaty of 1799 "expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it."

The Government of the United States can not concur in this conclusion. On the contrary, it holds that these treaty provisions do not authorize the destruction of a neutral vessel in any circumstances. By its express terms the treaty prohibits even the detention of a neutral vessel carrying contraband if the master of the vessel is willing to surrender the contraband. Article 13 provides "in the case supposed of a vessel stopped for articles of contrabands if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage."

In this case the admitted facts show that pursuant to orders from the commander of the German cruiser, the master of the *Frye* undertook to throw overboard the cargo of that vessel, but that before the work of delivering out the cargo was finished the vessel with the cargo was sunk by order of the German commander.

For these reasons, even if it be assumed as your Excellency has done, that the cargo was contraband, your contention that the destruction of the vessel was justified by the provisions of Article 13 does not seem to be well founded. The Government of the United States has not thought it necessary in the discussion of this case to go into the question of the contraband or non-contraband character of the cargo. The Imperial German Government has admitted that this question makes no difference so far as its liability for damages is concerned, and the result is the same so far as the justification for the sinking of the vessel is concerned. As shown above, if we assume that the cargo was contraband, the master of the *Frye* should have been allowed to

deliver it out, and the vessel should have been allowed to proceed on her voyage.

On the other hand, if we assume that the cargo was non-contraband, the destruction either of the cargo or the vessel could not be justified in the circumstances of this case under any accepted rule of international law. Attention is also called to the provisions of Article 12 of the treaty of 1785 between the United States and Prussia, which, like Article 13 of the treaty of 1799, was continued in force by Article 12 of the treaty of 1828. So far as the provisions of Article 12 of the treaty of 1785 apply to the question under consideration, they are as follows:

"If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; . . ."

It seems clear to the Government of the United States, therefore, that whether the cargo of the *Fryc* is regarded as contraband or as non-contraband, the destruction of the vessel was, as stated in my previous communication on this subject, "a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia."

For these reasons the Government of the United States must disagree with the contention which it understands is now made by the Imperial German Government that an American vessel carrying contraband may be destroyed without liability or accountability beyond the payment of such compensation for damages as may be fixed by a German Prize Court. The issue thus presented arises on a disputed interpretation of treaty provisions, the settlement of which requires direct diplomatic discussion between the two Governments, and can not properly be based upon the decision of the German Prize Court, which is in no way conclusive or binding upon the Government of the United States.

Moreover, even if no disputed question of treaty interpretation was involved, the admission by the Imperial German Government of its liability for damages for sinking the vessel would seem to make it unnecessary, so far as this claim is concerned, to ask the Prize Court to decide "whether the destruction of the ship and cargo was legal, and whether and under what conditions the property sunk was liable to confiscation," which, you state in your note dated June 7, are questions which should be decided by the Prize Court. In so far as these questions relate to the cargo, they are outside of the present discussion, because, as pointed out in my previous note to you on the subject

dated April 30, "the claim under discussion does not include damages for the destruction of the cargo."

The real question between the two Governments is what reparation must be made for a breach of treaty obligations, and that is not a question which falls within the jurisdiction of a Prize Court.

In my first note on the subject the Government of the United States requested that "full reparation be made by the Imperial German Government for the destruction of the *William P. Frye*." Reparation necessarily includes an indemnity for the actual pecuniary loss sustained, and the Government of the United States takes this opportunity to assure the Imperial German Government that such an indemnity, if promptly paid, will be accepted as satisfactory reparation, but it does not rest with a Prize Court to determine what reparation should be made or what reparation would be satisfactory to the Government of the United States.

Your Excellency states in your note of June 7 that in the event the Prize Court should not grant indemnity in accordance with the treaty requirements, the German Government would not hesitate to arrange for equitable indemnity, but it is also necessary that the Government of the United States should be satisfied with the amount of the indemnity, and it would seem to be more appropriate and convenient that an arrangement for equitable indemnity should be agreed upon now rather than later. The decision of the Prize Court, even on the question of the amount of indemnity to be paid, would not be binding or conclusive on the Government of the United States.

The Government of the United States also dissents from the view expressed in your note that "there would be no foundation for a claim of the American Government unless the Prize Courts should not grant indemnity in accordance with the treaty." The claim presented by the American Government is for an indemnity for a violation of a treaty, in distinction from an indemnity in accordance with the treaty, and therefore is a matter for adjustment by direct diplomatic discussion between the two Governments and is in no way dependent upon the action of a German Prize Court.

For the reasons above stated the Government of the United States can not recognize the propriety of submitting the claim presented by it on behalf of the owners and captain of the *Frye* to the German Prize Court for settlement.

The Government of the United States is not concerned with any proceedings which the Imperial German Government may wish to take on "other claims of neutral and enemy interested parties" which have not been presented by the Government of the United States, but which you state in your note of June 7 make Prize Court proceedings in this case indispensable, and it does not perceive the necessity for postponing the settlement of the present claim pending the consideration of those other claims by the Prize Court.

The Government of the United States, therefore, suggests that the Imperial German Government reconsider the subject in the light of these considerations, and because of the objections against resorting to the Prize Court the Government of the United States renews its former suggestion that an effort be made to settle this claim by direct diplomatic negotiations.

LANSING.

Ambassador Gerard to the Secretary of State

[Telegram]

No. 2656.]

AMERICAN EMBASSY,
Berlin, July 30, 1915.

Following note received:

FOREIGN OFFICE, *Berlin, July 30, 1915.*

The undersigned has the honor to inform his Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to the note of the 26th ultimo, Foreign Office No. 3990, on the subject of the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*, that the points of view brought out in the note have been carefully examined by the Imperial German Government. This examination has led to the following conclusions:

The Government of the United States believes that it is incumbent upon it to take the position that the treaty rights to which America is entitled, as contained in Article 12 of the Prussian-American treaty of amity and commerce of September 10, 1785, in Article 13 of the Prussian-American treaty of amity and commerce of July 11, 1799, were violated by the sinking of the *William P. Frye*. It interprets these articles as meaning that a merchantman of the neutral contracting party carrying contraband can not in any circumstances be destroyed by a war-ship of the belligerent contracting party, and that the sinking of the *William P. Frye* was, therefore, in violation of the treaty, even if her cargo should have consisted of contraband, which it leaves outside of the discussion.

The German Government can not accept this view. It insists as heretofore that the commander of the German auxiliary cruiser acted in the legal exercise of the right of control of trade in contraband enjoyed by war-ships of belligerent nations, and that the treaty stipulations mentioned merely oblige the German Government to make compensation for the damage sustained by the American citizens concerned.

It is not disputed by the American Government that, according to general principles of international law, a belligerent is authorized in

sinking neutral vessels under almost any conditions for carrying contraband. As is well known, these principles were laid down in Articles 49 and 50 of the Declaration of London, and were recognized at that time by the duly empowered delegates of all the nations which participated in the conference, including the American delegates, to be declarative of existing international law (see preliminary clause of the Declaration of London); moreover, at the beginning of the present war, the American Government proposed to the belligerent nations to ratify the Declaration of London and give its provisions formal validity also.

The German Government has already explained in its note of April 4 last for what reasons it considers that the conditions justifying the sinking under international law were present in the case of the *William P. Frye*. The cargo consisted of conditional contraband, the destination of which for the hostile armed forces was to be presumed under the circumstances; no proof to overcome this presumption has been furnished. More than half the cargo of the vessel was contraband, so that the vessel was liable to confiscation. The attempt to bring the American vessel into a German port would have greatly imperiled the German vessel in the given situation of the war, and at any rate practically defeated the success of her further operations. Thus the authority for sinking the vessel was given according to general principles of international law.

There only remains then to be examined the question how far the Prussian-American treaty stipulations modify these principles of international law.

In this connection Article 12 of the treaty of 1785 provides that in the event of a war between one of the contracting parties with another Power the free commerce and intercourse of the nationals of the party remaining neutral with the belligerent Powers shall not be interrupted, but that on the contrary the vessel of the neutral party may navigate freely to and from the ports of the belligerent Powers, even neutralizing enemy goods on board thereof. However, this article merely formulates general rules for the freedom of maritime intercourse and leaves the question of contraband untouched; the specific stipulations on this point are contained in the following article, which is materially identical with Article 13 of the treaty of 1799 now in force.

The plain intention of Article 13 is to establish a reasonable compromise between the military interests of the belligerent contracting party and the commercial interests of the neutral party. On the one hand the belligerent party is to have the right to prevent the transportation of war supplies to his adversaries even when carried on vessels of the neutral party; on the other hand the commerce and navigation of the neutral party is to be interfered with as little as possible by the measures necessary for such prevention, and reasonable com-

pensation is to be paid for any inconvenience or damage which may nevertheless ensue from the proceeding of the belligerent party.

Article 13 recites the following means whereby the belligerent party can prevent the vessels of the neutral party from carrying war supplies to his adversary. The detention of the ship and cargo for such length of time as the belligerent may think necessary; furthermore the taking over of the war stores for his own use, paying the full value of the same as ascertained at the place of destination. The right of sinking is not mentioned in the treaty and is therefore neither expressly permitted nor expressly prohibited, so that on this point the party stipulations must be supplemented by the general rules of international law. From the meaning and spirit of the treaty it really appears out of the question that it was intended to expect of the belligerent that he should permit a vessel loaded with contraband, for example a shipment of arms and ammunition of decisive importance for the outcome of the war, to proceed unhindered to his enemy when circumstances forbid the carrying of the vessel into port, if the general rules of international law allow sinking of the vessel.

The remaining stipulations of Article 13 must likewise be considered in this light; they provide that the captain of a vessel stopped shall be allowed to proceed on his voyage if he delivers out the contraband to the war-ship which stopped his vessel. For such delivering out can not of course be considered when the ensuing loss of time imperils either the war-ship herself or the success of her other operations. In the case of the *William P. Frye* the German commander at first tried to have matters settled by the delivery of contraband, but convinced himself of the impracticability of this attempt in that it would expose his ship to attack by whatever superior force of enemy war vessels pursuing him and was accordingly obliged to determine upon the sinking of the *Frye*. Thus he did not exceed on this point the limits to which he was bound by Article 13.

However, Article 13 asserts itself here to the extent that it founds the obligation to compensate the American citizens affected, whereas according to the general rules of international law the belligerent party does not need to grant compensation for a vessel lawfully sunk. For if, by Article 13, the mere exercise of right of highways makes the belligerent liable for compensation, this must apply *a fortiori* to the exercise of the right of sinking.

The question whether the German commander acted legally was primarily a subject for the consideration of the German Prize Courts according to general principles of international law as laid down; also in Article 1 of The Hague Convention for the establishment of an international Prize Court and in Article 51 of the Declaration of London. The German Government consequently laid the case of *William P. Frye* before the competent Prize Court at Hamburg, as was stated in its note of the 7th ultimo. This court found by its judg-

ment of the 10th instant that the cargo of the American vessel *William P. Frye* was contraband, that the vessel could not be carried into port, and that the sinking was therefore justified; at the same time the court expressly recognized the validity of the Prussian-American treaty stipulations severally mentioned for the relations between the German Empire and America, so that the sinking of the ship and cargo, so far as American property, makes the German Empire liable for indemnity. The Prize Court was unable to fix the indemnity itself, since it had no data before it, failing the receipt of the necessary detail from the parties interested.

It will now be necessary to settle these points in a different way. The German Government suggests as the simplest way that each of the two Governments designate an expert, and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her. The German Government will promptly pay the amount of indemnity thus ascertained; it expressly declares, however, reverting to what has been stated above, that this payment does not constitute satisfaction for the violation of American treaty rights, but a duty or policy of this Government founded on the existing treaty stipulations.

Should the American Government not agree to this manner of settling the matter, the German Government is prepared to submit the difference of opinion as being a question of the interpretation of the existing treaties between Germany and the United States to the tribunal at The Hague, pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

The undersigned begs to suggest that the Ambassador bring the above to the attention of his Government and avails himself, etc.,

VON JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

No. 2057.] DEPARTMENT OF STATE,
Washington, August 10, 1915.

You are instructed to present the following note to the German Minister for Foreign Affairs:

Under instructions from my Government, I have the honor to inform your Excellency in reply to your note of July 30 in regard to the claim for reparation for the sinking of the *William P. Frye,* that the Government of the United States learns with regret that the objec-

tions urged by it against the submission of this case to the Prize Court for decision have not commended themselves to the Imperial German Government, and it equally regrets that the reasons presented by the Imperial German Government for submitting this case to the Prize Court have failed to remove the objections of the Government of the United States to the adoption of that course. As this disagreement has been reached after the full presentation of the views of both Governments in our previous correspondence, a further exchange of views on the questions in dispute would doubtless be unprofitable, and the Government of the United States therefore welcomes your Excellency's suggestion that some other way should be found for settling this case.

The two methods of settlement proposed as alternative suggestions in your Excellency's note have been given careful consideration, and it is believed that if they can be combined so that they may both be adopted, they will furnish a satisfactory basis for the solution of the questions at issue.

The Government of the United States has already expressed its desire that the question of the amount of indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the *Frye* should be settled by diplomatic negotiation, and it entirely concurs with the suggestion of the Imperial German Government that the simplest way would be to agree, as proposed in your note, "that each of the two Governments designate an expert and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her," to be paid by the Imperial German Government when ascertained as stated in your note. It is assumed that the arrangement will include some provision for calling in an umpire in case the experts fail to agree.

The Government of the United States notes that your suggestion is made with the express reservation that a payment under this arrangement would not constitute an admission that American treaty rights had been violated, but would be regarded by the Imperial German Government merely as fulfilling a duty or policy founded on existing treaty stipulations. A payment made on this understanding would be entirely acceptable to the Government of the United States, provided that the acceptance of such payment should likewise be understood to be without prejudice to the contention of the Government of the United States that the sinking of the *Frye* was without legal justification, and provided also that an arrangement can be agreed upon for the immediate submission to arbitration of the question of legal justification, in so far as it involves the interpretation of existing treaty stipulations.

There can be no difference of opinion between the two Governments as to the desirability of having this question of the true intent and

meaning of their treaty stipulations determined without delay, and to that end the Government of the United States proposes that the alternative suggestion of the Imperial German Government also be adopted, so that this question of treaty interpretation can be submitted forthwith to arbitration pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

In this way both the question of indemnity and the question of treaty interpretation can promptly be settled, and it will be observed that the only change made in the plan proposed by the Imperial German Government is that instead of eliminating either one of its alternative suggestions, they are both given effect in order that both of the questions under discussion may be dealt with at the same time.

If this proposal proves acceptable to the Imperial German Government, it will be necessary also to determine whether, pending the arbitral award, the Imperial German Government shall govern its naval operations in accordance with its own interpretation, or in accordance with the interpretation maintained by the United States, as to the obligations imposed by their treaty stipulations, and the Government of the United States would be glad to have an expression of the views of the Imperial German Government on this point.

LANSING.

Ambassador Gerard to the Secretary of State

[Telegram]

AMERICAN EMBASSY,
Berlin, September 20, 1915.

Following note received from the Foreign Office to-day:

FOREIGN OFFICE,
Berlin, September 19, 1915.

The undersigned has the honor to make the following reply to the note of his Excellency, Mr. James W. Gerard, Ambassador of the United States of America, dated 13th ultimo, on the subject of the claim for reparation for the sinking of the American merchantman *William P. Frye.*

With regard first to the ascertainment of the damages by experts the German Government believes that it should dispense with the nomination of an umpire. In the cases of the ascertainment of damages hitherto arranged between the German Government and a neutral Government from similar causes the experts named by the two parties have always reached an agreement as to the amount of the damage without difficulty; should it not be possible, however, to reach an agreement on some point, it could probably be settled by diplomatic

negotiation. Assuming that the American Government agrees to this, the German Government names as its expert Dr. Kepny, of Bremen, director of the North German Lloyds; it begs to await the designation of the American expert.

The German Government declares that it agrees to the proposal of the American Government to separate the question of indemnity from the question of the interpretation of the Prussian-American treaties of 1785, 1799, and 1828. It therefore again expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the American side, but it will admit that the settlement of the question of indemnity does not prejudice the arrangement of the difference of opinion concerning the interpretation of the treaty rights, and that this dispute is left to be decided by The Hague tribunal of arbitration.

The negotiations relative to the signing of the *compromis* provided by Article 52 of The Hague Arbitration Convention would best be conducted between the Foreign Office and the American Embassy in Berlin in view of the difficulties in the way of instructing the Imperial Ambassador at Washington. In case the American Government agrees, the Foreign Office is prepared to submit to the Embassy a draft of such a *compromis*.

The American Government's inquiry whether the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question pending the arbitral proceedings has been carefully considered by German Government. From the standpoint of law and equity it is not prevented in its opinion from proceeding against American ships carrying contraband according to its interpretation until the question is settled by arbitration. For the German Government does not need to depart from the application of generally recognized rules of the law of maritime war, as the Declaration of London, unless and in so far as an exception based on a treaty, is established beyond all doubt; in the case of the present difference of opinion between the German and the American Governments such an exception could not be taken to be established except on the ground of the arbitral award. Moreover, the disadvantages to Germany which would ensue from the American interpretation of the treaty stipulations would be so much greater as to be out of proportion to those which the German interpretation would entail for the United States. For whereas the American interpretation would materially impede Germany in her conduct of warfare, hardly any particular disadvantage to American citizens would result from the German interpretation, since they receive full reparation for any property damage sustained.

Nevertheless the German Government, in order to furnish to the American Government evidence of its conciliatory attitude, has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband, even when the condi-

tions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port. On the other hand, it must reserve to itself the right to destroy vessels carrying absolute contraband wherever such destruction is permissible according to the provisions of the Declaration of London.

The undersigned begs to suggest that the Ambassador bring the above to the knowledge of his Government, and avails himself of the opportunity to renew, etc.

VON JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

DEPARTMENT OF STATE,
Washington, October 12, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

In reply to your Excellency's note of September 19, on the subject of the claim for damages for the sinking of the American merchantman *William P. Frye,* I am instructed by the Government of the United States to say that it notes with satisfaction the willingness of the Imperial German Government to settle the questions at issue in this case by referring to a joint commission of experts the amount of the indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the vessel, and by referring to arbitration the question of the interpretation of treaty rights. The Government of the United States further notes that in agreeing to this arrangement the Imperial German Government expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the Government of the United States, and that the settlement of the question of indemnity does not prejudice the arrangement of the differences of opinion between the two Governments concerning the interpretation of the treaty rights. The Government of the United States understands that this arrangement will also be without prejudice to its own contention in accordance with the statement of its position in its note of August 10 last to your Excellency on this subject, and the Government of the United States agrees to this arrangement on that understanding. Your Excellency states that the Imperial German Government believes that the nomination of an umpire should be dis-

pensed with, because it has been the experience of the Imperial German Government that the experts named in such cases have always reached an agreement without difficulty, and that should they disagree on some point, it could probably be settled by diplomatic negotiation. The Government of the United States entirely concurs in the view that it is not necessary to nominate an umpire in advance. It is not to be assumed that the experts will be unable to agree, or that if they are, the point in dispute can not be settled by diplomatic negotiation, but the Government of the United States believes that in agreeing to this arrangement it should be understood in advance that in case the amount of indemnity is not settled by the joint commission of experts or by diplomatic negotiation, the question will then be referred to an umpire if that is desired by the Government of the United States.

Assuming that this understanding is acceptable to the German Government, it will only remain for the Government of the United States to nominate its expert to act with the expert already nominated by the German Government on the joint commission. It seems desirable to the Government of the United States that this joint commission of experts should meet without delay as soon as the American member is named and that its meetings should be held in the United States, because, as pointed out in my note to you of April 30 last, any evidence which the German Government may wish to have produced is more acceptable and can more conveniently be examined there than elsewhere.

With reference to the agreement to submit to arbitration the question of treaty interpretation, the Government of the United States notes that in answer to its inquiry whether, pending the arbitral proceedings, the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question, the reply of the German Government is that it "has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port," and that "on the other hand it must reserve to itself the right to destroy vessels carrying absolute contraband whenever such destruction is permissible according to the provisions of the Declaration of London."

Without admitting that the Declaration of London is in force, and on the understanding that the requirement in Article 50 of the Declaration that "before the vessel is destroyed all persons on board must be placed in safety" is not satisfied by merely giving them an opportunity to escape in lifeboats, the Government of the United States is willing, pending the arbitral award in this case, to accept the Declaration of London as the rule governing the conduct of the German Government in relation to the treatment of American vessels carrying cargoes of absolute contraband. On this understanding the Government of the

United States agrees to refer to arbitration this question of treaty interpretation.

The Government of the United States concurs in the desire of the Imperial German Government that the negotiations relative to the signing of the *compromis* referring this question of treaty interpretation to arbitration under the provisions of Article 52 of The Hague Arbitration Convention, should be conducted between the German Foreign Office and the American Embassy in Berlin, and the Government of the United States will be glad to receive the draft compromise, which you inform me the Foreign Office is prepared to submit to the American Ambassador in Berlin. Anticipating that it may be convenient for the Imperial German Government to know in advance of these negotiations the preference of the Government of the United States as to the form of arbitration to be arranged for in the compromise, my Government desires me to say that it would prefer, if agreeable to the Imperial Government, that the arbitration should be by summary procedure, based upon the provisions of Articles 86 to 90, inclusive, of The Hague Arbitration Convention, rather than the longer form of arbitration before the Permanent Court at The Hague.

Arrange for simultaneous publication of this note at earliest date which will give you time to notify the Department.

LANSING.

Ambassador Gerard to the Secretary of State

No. 1964.] AMERICAN EMBASSY,
Berlin, December 2, 1915.

SIR: With reference to my telegram of even date[1] and to previous correspondence on the subject of the claim for damages for the sinking of the American merchantman *William P. Frye*, I have the honor to transmit to you herewith a copy and translation of a note received from the Imperial Foreign Office, dated November 29, 1915, which replies to a note which I addressed to the Imperial Foreign Office on October 14, 1915, pursuant to the instructions contained in your telegram No. 2291, of October 12, 1915.

A copy and translation of the draft of a *compromis* submitted by the Imperial German Government is likewise transmitted herewith.

I have, etc.,

GERARD.

---

[1] Not printed.

[Inclosure—Translation]

The German Minister for Foreign Affairs to Ambassador Gerard

BERLIN, *November 29, 1915.*

The undersigned has the honor to inform his Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to the note of October 14, F. O. No. 5671, relative to indemnity for the sinking of the American merchant vessel *William P. Frye,* as well as to the settlement by arbitration of the difference of opinion which has arisen on this occasion, as follows:

With regard first to the ascertainment of indemnity for the vessel sunk, the German Government is in agreement with the American Government in principle that the amount of damages be fixed by two experts, one each to be nominated by the German and the American Governments. The German Government regrets that it can not comply with the wish of the American Government to have the experts meet in Washington, since the expert nominated by it, Dr. Greve, of Bremen, director of the North German Lloyd, is unable to get away from here, and furthermore would be exposed to the danger of capture during a voyage to America in consequence of the conduct of maritime war by England contrary to international law. Should the American expert likewise be unable to get away, the two experts might perhaps get in touch with each other by correspondence.

The German Government likewise regrets that it can not assent at this time to the nomination of an umpire as desired by the American Government, for apart from the fact that in all probability the experts will reach an agreement in the case of the *William P. Frye* with the same facility as was the case with similar negotiations with other neutral Governments, the assent of the German Government to the consultation of an umpire would depend materially upon whether the differences of opinion between the two experts pertained to questions of principle or merely to the appraisement of certain articles. The consultation of an umpire could only be considered at all in the case of appraisements of this nature.

Should the American Government insist on its demands for the meeting of the experts at Washington or the early choice of an umpire, the only alternative would be to arrange the fixing of damages by diplomatic negotiation. In such an event the German Government begs to await the transmission of a statement of particulars of the various claims for damages accompanied by the necessary proofs.

With regard to the arbitral treatment of the difference of opinion relative to the interpretation of certain stipulations of the Prussian-American commercial treaties, the German Government has drawn up the inclosed draft of a *compromis,* which would have to be worded in the German and English languages and drawn up with due consideration of the two alternating texts. It is true that the draft does not accommodate the suggestions of the American Government so far as

it is not in accordance with the rules of summary procedure provided by chapter 4 of The Hague Arbitration Convention, but with the rules of regular procedure. The summary procedure is naturally intended only for differences of opinion of inferior importance, whereas the German Government attaches very particular importance to the interpretation of the Prussian-American treaties which have existed for over 100 years. Pursuant to the agreement made, any proposed amendments would have to be discussed between the Foreign Office and the American Embassy, and oral discussions would appear to be advisable.

Until the decision of the permanent court of arbitration, the German naval forces will sink only such American vessels as are loaded with absolute contraband, when the preconditions provided by the Declaration of London are present. In this the German Government quite shares the view of the American Government that all possible care must be taken for the security of the crew and passengers of a vessel to be sunk. Consequently, the persons found on board of a vessel may not be ordered into her lifeboats except when the general conditions, that is to say, the weather, the condition of the sea, and the neighborhood of the coasts afford absolute certainty that the boats will reach the nearest port. For the rest the German Government begs to point out that in cases where German naval forces have sunk neutral vessels for carrying contraband, no loss of life has yet occurred.

The undersigned begs to give expression to the hope that it will be possible for the two Governments to reach a complete understanding regarding the case of the *William P. Frye* on the above basis, and avails himself of this opportunity to renew to his Excellency, the Ambassador, the assurance of his highest consideration.

VON JAGOW.

[Translation]

ARBITRATION COMPROMIS

The Imperial German Government and the Government of the United States of America having reached an agreement to submit to a court of arbitration the difference of opinion which has arisen, occasioned by the sinking of the American merchant vessel *William P. Frye* by a German war-ship, in respect of the interpretation of certain stipulations of the Prussian-American treaties of amity and commerce, the undersigned, duly authorized for this purpose, have agreed to the following *compromis:*

ARTICLE 1

A court of arbitration composed in accordance with the following stipulations is charged with the decision of the legal question:

Whether according to the treaties existing between the parties, in

particular Article 13 of the Prussian-American treaty of amity and commerce of July 11, 1799, the belligerent contracting party is prevented from sinking merchant vessels of the neutral contracting party for carrying contraband when such sinking is permissible according to general principles of international law.

ARTICLE 2

The court of arbitration shall be composed of five arbitrators to be chosen among the members of the permanent tribunal of arbitration at The Hague.

Each Government will choose two arbitrators, of whom only one may be a national of such country, as soon as possible, at the latest within two weeks from the day this *compromis* is signed. The four arbitrators thus nominated shall choose an umpire within four weeks after they have been notified of their nomination; in case of an equal vote the president of the Swiss Federal Council shall be requested to select the umpire.

ARTICLE 3

On March 1, 1916, each party shall transmit to the bureau of the permanent tribunal of arbitration 18 copies of its argument with authenticated copies of all documents and correspondence on which it intends to rely in the case. The bureau will arrange without delay for the transmission to the arbitrators and to the parties, each arbitrator to receive two copies, each party three copies. Two copies shall remain in the archives of the bureau.

On May 1, 1916, the parties shall deposit their countercases with the supporting evidence and their statements in conclusion.

ARTICLE 4

Each party shall deposit with the international bureau at the latest on March 1, 1916, the sum of 3,000 gulden of The Netherlands toward the costs of the arbitral procedure.

ARTICLE 5

The court of arbitration shall meet at The Hague on June 15, 1916, and proceed immediately to examine the dispute.

ARTICLE 6

The parties may make use of the German or the English language.

The members of the court may use the German or the English language as they may choose. The decisions of the court shall be written in both languages.

ARTICLE 7

Each party shall be represented by a special agent whose duty shall be to act as an intermediary between the party and the court. These agents shall furnish the court any explanations which the court may demand of them; they may submit any legal arguments which they may consider advisable for the defense of their case.

ARTICLE 8

The stipulations of the convention of October 18, 1907, for the pacific settlement of international disputes, shall be applied to this arbitral procedure, in so far as nothing to the contrary is provided by the above *compromis*.

Done in duplicate at Berlin on the —— day of ——

Case of the British Steamship *Appam*, captured by German Naval Forces and brought by a Prize Crew into an American Port

The German Ambassador to the Secretary of State

[Translation]

J. Nr. A 785.]

GERMAN EMBASSY,
Washington, February 2, 1916.

MR. SECRETARY OF STATE: I have the honor to inform Your Excellency that the British steamer *Appam*, captured by the German naval forces, arrived at Newport News, Va., on the 1st of this month under the command of Lieut. Berg of the navy. The commanding officer intends, in accordance with Article XIX of the Prusso-American treaty of September 10, 1785, to stay in an American port until further notice

The *Appam* has not been converted into an auxiliary cruiser, is not armed, and has made no prize under Mr. Berg's command She carries on board the crews of seven enemy vessels taken by H. M. S. *Moewe* who have been transferred to her by that ship.

There is on board a locked-up military party of the enemy, whose internment in the United States I request.

The crew of the *Appam* tried to offer resistance when the ship was

captured, as the guns at hand were already in place and trained on the German warship. The members of the crew are therefore to be looked upon likewise as combatants, and I have the honor to ask of Your Excellency that they too be detained in the United States until the end of the war.

Accept, etc.,

J. BERNSTORFF.

The Secretary of State to the British Ambassador

DEPARTMENT OF STATE,
Washington, February 3, 1916.

MY DEAR MR. AMBASSADOR: Referring to our conversation of to-day in regard to the steamer *Appam* now at Norfolk in charge of a German prize crew, I have received from the collector of customs in Norfolk a list (copy of which is inclosed)[1] of persons on board the *Appam* which the prize master asserts are in the military or naval service of His Britannic Majesty and whom he believes, therefore, should not be released from his vessel. I desire, therefore, to ask if you will be good enough to inform me as to whether any of the gentelmen named on the list are members of His Majesty's armed forces.

I am, etc.,

ROBERT LANSING.

Memorandum from the British Embassy

BRITISH EMBASSY,
Washington, February 4, 1916.

The British Embassy has the honour to refer to the rule of international law now generally recognised and embodied in Articles 21 and 23 of The Hague Convention XIII of 1907 and to request that the principles in question should be applied to the *Appam*.

These principles have been accepted by both the British and the United States Governments. The Queen's Proclamation of 1861 interdicted the armed ships of belligerents from carrying prizes made by

[1] Not printed.

them into British ports, harbours, roadsteads, or waters, a measure of which the Secretary of State of the United States expressed his approval.

In the report of the American delegates to the Hague Conference it is stated that while Articles 21 and 22 seemed unobjectionable, Article 23 (allowing the sequestration of prizes) "was objectionable for the reason that it involves a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port. This article represents the revival of an ancient abuse and should not be approved. In this connection it is proper to note that a proposition absolutely forbidding the destruction of a neutral prize, which was vigorously supported by England and the United States, failed of adoption. Had the proposition been adopted there would have been some reason for authorizing such an asylum to be afforded in the case of neutral prizes."

This declaration shows that the Prussian treaty of 1799 (by which in any case Great Britain, not being a party, can not be affected) was regarded as obsolete and inconsistent with modern doctrines, and the fact that the United States Government adhered to the convention while reserving Article 23 shows that in so far as the provisions of the treaty of 1799 conflict with the convention they are regarded as overridden by the later instrument.

The rule embodied in Article 21 of the 1907 Convention is of general application, and the fact that Great Britain has not ratified the convention does not affect the obligation of the United States to treat ships and property of all nations in accordance with what the attitude of the United States towards the convention shows that they themselves regarded as the general rule.

Relying on the above considerations this Embassy is instructed to request that if the *Appam* is regarded by the United States Government as a prize she should be restored to her owners and the prize crew interned.

The British Embassy begs to add that according to information received the captain of the German prize crew signalled on arrival that the ship was a part of the armed naval force of the German Empire. If this claim is advanced the United States Government will doubtless deal with the ship according to their recognised practice. If, however, she is regarded as a prize, this Embassy expresses its entire confidence

that she will not be allowed to leave United States jurisdiction under German control in a condition which would enable her to undertake offensive action; and that she will not be allowed to increase or augment her force by adding to her armament or her crew or by transfer of trained men to the ship or by a change of personnel or in any other manner. The British Embassy begs to add that the claim that the ship was a war vessel shows that if allowed by the United States to leave as a prize under German control she would be used by the Germans as a man-of-war; and it is needless to remind the State Department of the doctrine accepted by both our Governments, under which the British Government would be compelled to hold the United States Government responsible for any injury which she may inflict.

CECIL SPRING RICE.

Memorandum from the German Embassy[1]

Telegram from the German Government concerning its opinion on *Appam* case:

> "*Appam* is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Article 19 of Prusso-American treaty of 1799. Article 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war according to Article 28. The above-mentioned Article 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English."

Memorandum from the British Embassy

BRITISH EMBASSY,
Washington, February 12, 1916.

It has been ascertained from Norfolk that no restrictions are placed upon persons going on board the *Appam* at the invitation of her com-

[1] Received at the Department of State February 8, 1916.

mander, though the latter reports daily to the collector of customs that all visitors have returned to the shore.

The British Embassy cannot but view this arrangement with some anxiety and, referring to their memorandum of February 3rd, beg to reiterate the expression of their confidence that adequate precautions are being taken with a view to preventing any increase in the armament or crew of the ship or any change in her personnel which would augment her force.

The present notification is not of course to be considered as a request for action or as a complaint, but is made in fulfilment of the duty incumbent on this Embassy to inform the State Department at once of any information which may reach them relative to matters appertaining to pending questions between the two Governments.

Memorandum from the British Embassy

BRITISH EMBASSY,
Washington, February 15, 1916.

The British Embassy has the honour to inform the State Department that the British Government reserves all rights under accepted principles and practice of international law with regard to the *Appam,* and that any action taken in the matter by the owners in maintenance of their interests is not in any way to be considered as prejudicing any claim advanced or to be advanced by the British Government.

The German Ambassador to the Secretary of State

J. Nr. A. 1293.] GERMAN EMBASSY,
Washington, February 22, 1916.

MY DEAR MR. SECRETARY: Lieut. Hans Berg, of the German Imperial Navy and commander of H. M. S. *Appam,* now lying at anchor near Newport News, Va., has infromed me that a libel was filed against said vessel in the United States District Court for the Eastern District of Virginia, at Norfolk, on the 16th day of February, 1916, by the British and African Steam Navigation Co., Limited, and that,

under the authority of said court, he has been cited by the marshal of the eastern district of Virginia to appear before said court on Friday, the 3d day of March, 1916, to answer the said libel.

As the *Appam* was captured at sea by a German man-of-war and brought to the Virginian port as a prize ship according to the treaty existing between our countries, you may well appreciate my surprise at the action which has been taken.

Article XIX of the treaty of 1799 between Prussia and the United States, renewed in part by Article XII of the treaty of 1828, provides that "the vessels and effects taken from" the enemies of the contracting parties may be carried freely wheresoever they please, and that such prizes shall not be "put under legal process when they come to and enter the ports of the other party . . ."

In view of the terms of the treaty, I am at a loss to understand why such action has been taken by a court of your country. It may be argued that it has been because Article 21 of the Hague "Convention concerning the rights and duties of neutral powers in naval war" is applicable. This article provides: "A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions."

> It must leave as soon as the circumstances which justified its entry are at an end. If it does not the neutral power must order it to leave at once; should it fail to obey the neutral power must employ the means at its disposal to release it with its officers and crew and to intern the crew.

But as Great Britain has not ratified the convention the article is not binding, for the reason that Article 28 provides: "The provisions of the present convention do not apply except to the contracting powers, and then only if all the belligerents are parties to the convention."

Besides, the *Appam* flies the naval flag of and belongs to the German Government, and therefore the possession of the captors in a neutral port is the possession of their sovereign. The sovereign whose officers have captured the vessel as a prize of war remains in possession of that vessel and has full power over her. The neutral sovereign or its court can take no cognizance of the question of prize or no prize and can not wrest from the possession of the captor a prize of war brought into its ports.

The position which I take is fully supported by an opinion of the Attorney General of the United States (7 Op., 122), the syllabus of which recites that a "foreign ship of war or any prize of hers in command of a public officer possesses in the ports of the United States the right of exterritoriality and is not subject to the local jurisdiction."

I would therefore most respectfully protest against the action of the United States District Court, and request that you may ask the Attorney General to instruct the United States District Attorney for the Eastern District of Virginia to appear before the United States District Court and take such steps as may be necessary and proper to secure the prompt dismissal of the libel.

I am, etc.,

J. BERNSTORFF.

The Secretary of State to the German Ambassador

DEPARTMENT OF STATE,
Washington, March 2, 1916.

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note of the 2d of February, informing me that the British steamer *Appam,* captured by the German naval forces, had arrived at Norfolk under the command of Lieut. Berg, of the Imperial German Navy, who intends, in accordance, as he believes, with Article XIX of the Prussian-American treaty of 1799, to remain in American waters until further notice, and that the *Appam* has not been converted into an auxiliary cruiser, is not armed, and has taken no prizes under Lieut. Berg's command. In conclusion Your Excellency requests internment in the United States during the remainder of the war of a military party belonging, Your Excellency states, to the enemy of Germany and also the internment of the crew of the *Appam,* inasmuch as they offered resistance to capture by His Majesty's forces.

I have the honor also to acknowledge the receipt of Your Excellency's note of February 22, calling my attention to a libel which has been filed against the *Appam* by the United States District Court on February 16 by the British and African Steam Navigation Co., Limited, and to the fact that Lieut. Berg has been cited to appear before the court on March 3 next to answer this libel. Your Excellency points

out that in view of the terms of Article XIX of the treaty of 1799 and of the inoperation of The Hague Convention relating to neutral rights and duties in naval warfare, you are at a loss to understand why such action has been taken in this country. Your Excellency, moreover, asserts in effect that as the *Appam* flies the naval flag of and belongs to the German Government, and as the possession of the captors is the possession of their sovereign, "the neutral sovereign or its court can take no cognizance of the question of prize or no prize and can not wrest from the possession of the captor a prize of war brought into its ports." Your Excellency, in conclusion, protests against the action of the court and requests that the Attorney General instruct the proper United States District Attorney to take such steps as may be necessary and proper to secure the prompt dismissal of the libel.

Article XIX of the treaty of 1799, to which Your Excellency refers, reads as follows:

> The vessels of war, public and private, of both parties, shall carry (*conduire*) freely, wheresoever they please, the vessels and effects taken (*pris*) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (*prises*) be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried (*conduites*) out again at any time by their captors (*le vaisseau preneur*) to the places expressed in their commissions, which the commanding officer of such vessel (*le dit vaisseau*) shall be obliged to show. But conformably to the treaties existing between the United States and Great Britain, no vessel (*vaisseau*) that shall have made a prize (*prise*) upon British subjects shall have a right to shelter in the ports of the United States, but if (*il est*) forced therein by tempests, or any other danger or accident of the sea, they (*il sera*) shall be obliged to depart as soon as possible.

This translation is taken from the published treaties of the United States, and while not conforming strictly to the original French text (copy of which is inclosed), is sufficiently accurate for the purposes of this note. At the outset it may be pointed out that as the object of this provision was to mollify the existing practice of nations as to asylum for prizes brought into neutral ports by men-of-war, it is subject to a strict interpretation when its privileges are invoked in a given case in modification of the established rule. By a reasonable interpretation of Article XIX, however, it seems clear that it is applicable only

to prizes which are brought into American ports by vessels of war. The *Appam,* however, as Your Excellency is aware, was not accompanied by a ship of war, but came into the port of Norfolk alone in charge of a prize master and crew. Moreover, the treaty article allows to capturing vessels the privileges of carrying out their prizes again "to the places expressed in their commissions." The commissions referred to are manifestly those of the captor vessels which accompany prizes into port and not those of the officers of the prizes arriving in port without convoy, and it is clear that the port of refuge was not to be made a port of ultimate destination or indefinite asylum. In the case of the *Appam* the commission of Lieut. Berg, a copy of which was given to the collector of customs at Norfolk, not only is a commission of a prize master, but directs him to bring the *Appam* to the nearest American port and "there to lay her up." In the opinion of the Government of the United States, therefore, the case of the *Appam* does not fall within the evident meaning of the treaty provision which contemplates temporary asylum for vessels of war accompanying prizes while *en route* to the places named in the commander's commission, but not the deposit of the spoils of war in an American port. In this interpretation of the treaty, which I believe is the only one warranted by the terms of the provision and by the British treaties referred to in Article XIX, and by other contemporaneous treaties, the Government of the United States considers itself free from any obligation to accord the *Appam* the privileges stipulated in Article XIX of the treaty of 1799.

Under this construction of the treaty the *Appam* can enjoy only those privileges usually granted by maritime nations, including Germany, to prizes of war, namely, to enter neutral ports only in case of stress of weather, want of fuel and provisions, or necessity of repairs, but to leave as soon as the cause of their entry has been removed.

As to the grounds upon which the application for the libel of the *Appam* by the United States court was made, this Department has no direct information; but it is understood that the libelant contends that the *Appam* is not, assuming that it is a prize of the German Government, the property of that Government, but that, on the contrary, the title to the vessel is now properly in the British owners. Whether in these circumstances the United States court has properly or improperly assumed jurisdiction of the case and taken custody of the ship is a legal question which, according to American practice, must now be decided by the municipal courts of this country. With the purpose,

however, of having Your Excellency's views as to this matter brought to the attention of the court, I have transmitted your note of February 22 to the Attorney General, with a request that he instruct the United States District Attorney to appear in the case as *amicus curiæ* and present to the court a copy of Your Excellency's note.

As to the internment of the military party which Your Excellency states was on board the *Appam,* as well as the officers and crew who offered resistance to capture by His Majesty's ships, I have the honor to inform you that the Government has, after due consideration, concluded that they should be released from detention on board the *Appam,* together with their personal effects.

Accept, etc.,

ROBERT LANSING.

The German Ambassador to the Secretary of State

J. Nr. A. 1829.] GERMAN EMBASSY,
Washington, March 14, 1916.

MY DEAR MR. SECRETARY: Referring to previous correspondence in regard to H. M. S. *Appam,* I am informed by our counsel that the State and Treasury Departments, mainly through the collector of customs, have been requesting the District Court of the United States for the Eastern District of Virginia to guard against two things: (1) An augmentation of the crew of the *Appam;* and (2) an attempt on her part to escape; and that such action would tend to disturb the peace of mind of the court.

While I can not understand on what theory the court can be asked to have anything to do with questions of augmentation, I can readily appreciate its desire to prevent any possible escape so long as court proceedings are pending.

In view of the action of the Departments, the court appears unwilling to permit the ship to continue in the stream with only two keepers, and has requested counsel to consent to her removal to a wharf or some safer anchorage.

Lieut. Berg objects to her being taken to a wharf on account of increased difficulty of controlling his crew, the danger of annoyance from curiosity seekers, and the possibility of injury from hostile sources.

Because of the divergent wishes in this respect, I believe that the

court will be fully satisfied, and at the same time Lieut. Berg can carry out his wishes, if I now assure you, as I do, that, while reserving all the rights of the German Government in this case, both before the court and in our diplomatic negotiations, and with a further reservation that such assurance and agreement shall be without prejudice to the defense, no change shall be made in the *status quo* with respect to augmentation of the crew or equipment that might be considered a breach of neutrality, and that no attempt to run the vessel away will be made so long as said ship remains under the custody of said court.

I would therefore most respectfully request that you may communicate my assurance to the Treasury Department, and that both Departments may communicate, through the proper officers, with the court and inform it that, in view of my assurance, they have no further requests to make along this line at the present time, and that for the present it would not appear to be necessary that the ship be removed to a wharf.

In my note of February 22 I requested you to ask the Attorney General to instruct the United States District Attorney for the Eastern District of Virginia to appear before the United States District Court and take such steps as may be necessary and proper to secure the dismissal of the libel. At a hearing held before said court at Richmond, Va., on March 7, said attorney appeared and presented a copy of my said note of February 22 to you, but did not ask for the dismissal of the libel. In view of this fact, and believing at this time that his presence in said court will not be further necessary for assisting in arriving at a solution of the case, I would most respectfully request that you may ask the Attorney General to instruct him not to appear further without securing express instructions so to do for such special reasons as your Government may have for so authorizing him.

I am, etc.

J. BERNSTORFF.

The German Ambassador to the Secretary of State

[Translation]

J. Nr. A. 1727.] GERMAN EMBASSY,

Washington, March 16, 1916.

In reply to your kind note of the 2d instant, I have the honor, in compliance with instructions, to submit to you the inclosed memoran-

dum of the Imperial Government on the subject that has been received by me.

Should the Government of the United States fail to concur in the Imperial Government's interpretation, the Imperial Government would propose that the construction of the treaty in question be referred to the Hague Court of Arbitration in the same way as the Imperial Government proposed in the *William P. Frye* case in Secretary of State von Jagow's note of November 29 last, to Mr. Gerard, ambassador of the United States at Berlin, provided that the *status quo* of the steamship *Appam* will remain unchanged throughout the arbitration proceedings and that the steamer will be allowed to remain with her prize crew in an American port during that time.

Accept, etc.,

J. BERNSTORFF.

[Inclosure]

MEMORANDUM

J. Nr. A 1727/16.] GERMAN EMBASSY.

The Imperial Government does not consider correct the interpretation of the Department of State of Article 19 of the treaty of 1799 as given in the note.

The Department of State criticized that the *Appam* was not brought into port by a warship, but arrived only with a prize crew on board. The treaty of 1799, referring to prizes accompanied by a warship, speaks, of course, of commercial warfare as it was usual in those times and which could be carried on by both parties only by privateers. This made it necessary that the prize was brought into port by the capturing vessel. The development of modern cruiser warfare, where, as a rule, the warship sends her prize into port by a military prize crew, can not render the stipulations of Article 19 of said treaty null and void. The prize masters and prize crew, who represent the authority of the belligerent State, now take the place which the capturing vessel held formerly. That such stipulations are not in contradiction to the general rules of international law, and that, therefore, the treaty is not subject to the especially strict interpretation given to it by the Department of

State, is proved by Article 23 of the Hague Convention regarding neutrality on sea, which was adopted by a great majority, although under reservation by the United States, Great Britain, and Japan.

The Department of State missed in the commission of Lieut. Berg an order to take the prize into a German port, as it is unwilling to admit the permanent internment of the German prize in an American port as a consequence of the treaty. As proved by the last but obsolete sentences of Article 19 of the treaty of 1785 and Article 19 of the treaty of 1799, the object of Article 19 is to grant asylum or shelter to prizes of one contracting party in the ports of the other party. The asylum naturally continues only as long as the prize crew is on board and the danger of being captured by enemy naval forces exists. Both premises prevail in this case. Lieut. Berg, an officer of the Imperial Navy, was commissioned by the commander of a German warship to seek with his prize in an American port the asylum guaranteed by the treaty. The opinion of the Department of State that the commission must mention a German port of destination for the prize is unfounded, as Article 19 only provides the freedom of the prize to leave for the places which are named in the commission, but does not make the right of asylum depend on such port being mentioned. Such an indication seems superfluous if the prize is conducted by a prize crew mustered from the Imperial Navy, for such crew has to bring the prize into a German port as soon as possible. At present the claim for asylum naturally still exists, considering the uneven distribution of the domination of the seas between the belligerents.

As long as the right of asylum lasts the jurisdiction of American courts over the prize is formally excluded by Article 19; a German prize court alone is competent. The opinion of the Department of State that the American courts must decide about the claims of the British shipping company is incompatible with the treaty stipulations.

It is therefore respectfully requested that the prize crew should be permitted to remain in the American port, and also that the legal steps before an American court should be suspended.

British Ambassador to the Secretary of State

BRITISH EMBASSY,
Washington, March 31, 1916.

MY DEAR MR. SECRETARY: On February 3rd, last, I had the honour, under instructions from my Government, to request that if the *Appam* were regarded by the United States Government as a prize she should be restored to her owners and the prize crew interned.

Since that date it has come to my knowledge that a proceeding has been brought in the Admiralty Court of the United States by the owners of the vessel for its restitution and that the court has taken jurisdiction of the suit. It appears that the vessel had been detained in an American port by the prize crew for more than two weeks before suit was instituted. I am informed that the vessel was in a seaworthy condition when brought into port and that the time which elapsed before the beginning of the suit was more than sufficient to supply any deficiencies of coal and provisions. The detention of the vessel for such a period of time was therefore a violation of the neutrality of the United States under the law of nations as expressed in Articles 21 and 22 of Convention XIII as formulated at The Hague in 1907 and as previously understood and applied among the nations.

I understand that the Admiralty Courts of the United States have jurisdiction to decree the restitution to the owners of a prize brought into an American port by a belligerent captor when there has been a violation of American neutrality on the part of the captor. It seems to me desirable and proper that such violation of American neutrality should be called to the court's attention, not only by the private owners of the captured vessel but also by the official representatives of the United States Government.

I have the honour to request that if the United States Government do not see their way clear to direct by executive order, as suggested in my note above referred to, the return of the vessel to her British owners, instructions may be given, should there be no objection, to the proper representatives of the Department of Justice of the United States to appear in their official capacity before the United States District Court for the Eastern District of Virginia, in which the suit for the recovery of the steamship *Appam* is pending, and to represent to that court on behalf of the Government of the United States that

the detention of the steamship *Appam* under the circumstances above set forth constituted a violation of the neutrality of the United States and apply to the court to direct the return of the vessel to her owners upon due proof of their ownership and of the facts constituting the violation of neutrality above set forth.

I am, etc.

CECIL SPRING RICE.

The Secretary of State to the British Ambassador

DEPARTMENT OF STATE
Washington, April 4, 1916.

MY DEAR MR. AMBASSADOR: I have received your formal note of the 31st ultimo, in which you request that as the *Appam* had violated the neutrality of the United States by her staying in port up to the beginning of the suit now pending against her, such violation of American neutrality be called to the court's attention by the proper representatives of the Department of Justice on behalf of the Government of the United States, and that application be made to the court to direct the return of the vessel to the owners upon due proof of their ownership and of the facts constituting a violation of neutrality.

In reply, allow me to say that as the vessel was in American jurisdiction up until the time of the filing of the suit against her, pending consideration of the question as to whether she was entitled to the privileges claimed for her by the German Government by virtue of Article 19 of the treaty of 1799, and as this Government reached a decision on that question only after the libel had been filed, I am unable to accept your suggestion that the presence of the *Appam* in American waters, in the circumstances, constituted a violation of the neutrality of the United States. Holding this view, I regret that I am unable to comply with your request to have official representations made to the court in the sense of your note under acknowledgment.

I am, etc.,

ROBERT LANSING.

The Secretary of State to the German Ambassador

No. 2217.]

DEPARTMENT OF STATE,
Washington, April 7, 1916.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 16th ultimo, inclosing a memorandum of the Imperial German Government on the subject of the *Appam*, now at Norfolk. The memorandum of the Imperial Government contends, in brief, that Article 19 of the treaty of 1799 "speaks, of course, of commercial warfare as it was usual in those times and which would be carried on by both parties only by privateers," and that the development of modern cruiser warfare, in which a prize master and crew representing the authority of a belligerent State now take the place which the convoying vessel formerly held, should govern the present interpretation of the treaty. The Government of the United States agrees with the German Government's statement that the treaty speaks of a mode of warfare in use at the time the treaty was negotiated. It is precisely for this reason that the Government of the United States does not believe that the treaty was intended to apply to circumstances of modern warfare which are essentially different from those in vogue at the close of the eighteenth century. The Government of the United States does not understand upon what ground the Imperial Government contends that a treaty granting concessions under specifically mentioned circumstances can be construed to apply to a situation involving other and different circumstances. To grant limited asylum in a neutral port to a prize accompanied by the capturing vessel is not the granting of a right of "laying up" in a neutral port a prize which arrives in the control of a prize master and crew.

Your Excellency's Government further contends that Article 19, besides being applicable to modern conditions, is not contrary to the general rules of international law, and therefore not subject to a restricting interpretation, and in support of this cites as declaratory of the general rules of international law Article 23 of Hague Convention XIII. As indicated by the Imperial Government, the United States did not in the case of this convention, and never has, assented to the sequestration of prizes in its ports. The ground of this position of the United States is that it does not, in the opinion of this Government,

comport with the obligations of a neutral power to allow its ports to be used either as a place of indefinite refuge for belligerent prizes or as a place for their sequestration during the proceedings of prize courts. The contention of the Government of the United States in its note of March 2 in this case is consistent with this long-established and well-known policy of the American Government, in the light of which the treaty of 1799 was negotiated and has been enforced and applied. Provided the vessel enters an American port accompanied by a German naval vessel, Article 19 contemplates in the view of this Government merely temporary sojourn of the prize in an American port and not its sequestration there pending the decision of a prize court.

Holding the view that Article 19 is not applicable to the case of the *Appam,* this Government does not consider it necessary to discuss the contention of the Imperial Government that under Article 19 American courts are without jurisdiction to interfere with the prize, and for the same reason it can not accede to the request that the "legal steps before an American court should be suspended."

In Your Excellency's note transmitting the memorandum of your Government it is proposed that should this Government fail to concur in the contentions of the Imperial Government the construction of the treaty in question be referred to the Hague Court of Arbitration in the same way as the Imperial Government has proposed to do in the *William P. Frye* case, provided that the *status quo* of the *Appam* remain unchanged throughout the arbitration proceedings and that the steamer be allowed to remain with her prize crew in an American port during that time. It is regretted that this proposal which appeals to the principle of arbitration, of which this Government is an earnest advocate, can not be accepted in this particular case by the Government of the United States. Its acceptance would manifestly defeat the very object of the United States in its reservation to Article 23 of Convention XIII by allowing the prize to remain in an American port for an indefinite period while the arbitration proceedings were in progress, which might continue until after peace is restored. In this respect the case differs from that of the *William P. Frye.* Moreover, inasmuch as the *Appam* has been libeled in the United States District Court by the alleged owners, this Government, under the American system of government, in which the judicial and executive branches are entirely separate and independent, could not vouch for a continuance of the

status quo of the prize during the progress of the arbitration proposed by the Imperial Government. The United States Court, having taken jurisdiction of the vessel, that jurisdiction can only be dissolved by judicial proceedings leading to a decision of the court discharging the case—a procedure which the executive can not summarily terminate.

In these circumstances the Government of the United States can only accept the proposal of the German Government for the arbitration of the meaning of Article 19 of the treaty of 1799, upon the understanding that the *Appam* depart from the territorial jurisdiction of the United States, in the event that the libel is dismissed by the court and after she has had a reasonable time to take on board such supplies as may be necessary, in the judgment of this Government, for a voyage to the nearest port subject to the sovereignty of Germany; and failing this, that she be released and the prize master and crew be interned for the remainder of the war.

Accept, etc.,

ROBERT LANSING.

Ambassador Gerard to the Secretary of State

No. 3192.]

AMERICAN EMBASSY,
Berlin, May 22, 1916.

SIR: I have the honor to enclose herewith a translation copy of Note Verbale No. IIIa 8936,[1] which the German Foreign Office addressed to this Embassy under date of May 17, 1916, together with the three enclosures mentioned therein and translation copies of the same, in connection with the judgment rendered by the Prize Court at Hamburg on the 11th instant in the proceedings against the British steamship *Appam*.

I have, etc.,

JAMES W. GERARD.

[Inclosure]

IN THE NAME OF THE EMPIRE

In the Prize Court proceedings relating to the British steamship *Appam*, owners: African Steamship Co., home port Liverpool,—and

[1] Not printed.

her cargo—the Imperial Prize Court at Hamburg, at its session of May 11, 1916, in which took part:

1) Oberlandesgerichtspresident Dr. Brandis, as President,
2) Mr. Nolze, merchant,
3) Captain Reincke, I. N. retired,
4) Oberlandesgerichtsrat Dr. Lehmann,
5) Mr. Witthoefft, merchant,

as Assistant Judges,

rendered the following judgment:

The captured vessel and the cargo therein have been legally captured and are to be confiscated.

Reasons

The British steamship *Appam,* a merchant vessel, was captured on January 15, 1916, by H. M. S. *Möwe,* in the Atlantic Ocean and brought to Newport News. According to the ship's papers the vessel is of British nationality; proprietor is the African Steamship Company of Liverpool. The ship is registered at Liverpool. The steamship was on the voyage from Duala to Liverpool. Enemy vessels are subject to capture, according to P[rize] O[rdinance] 10, and to confiscation, according to P. O. 17.

The cargo on board consisted of about 3,000 tons of general cargo, including £36,549 gold in bars. According to the bills of lading, in connection with P. O. 20, the entire cargo must be considered as enemy property and is subject to confiscation, according to P. O. 18.

In reply to the monition which, in accordance with the provisions of §26 P. G. O., was published on March 20, 1916, in the *Deutscher Reichsanzeiger* (Imperial German Gazette) for the entry of claims in respect of ship and cargo, nobody has applied within the stipulated period of six weeks. The application of the Imperial Commissioner has been made in accordance with P. G. O. 20.

Judgment had, accordingly, to be given as stated.

(Signed) Brandis. Dr. K. Lehmann.

For the proper copy:
Hamburg, May 11, 1916.
(L. S.) Signature,
Secretary of the Imperial Prize Court.

Certified.
Berlin, May 17, 1916.
[SEAL] The Foreign Office of the German Empire.
By order:
90980
(Signed) Kriege.

Embassy of the United States of America, Berlin.
Seen for authentication of the foregoing signature.
This 18th day of May, 1916.
[SEAL] (Signed) ROLAND B. HARVEY,
Secretary of the Embassy.

Proposal of the German Government for a revision of the Treaty of 1799[1]

The Minister of Switzerland in Charge of German Interests in America to the Secretary of State

LEGATION OF SWITZERLAND,
Washington, February 10, 1917.

MR. SECRETARY OF STATE: The German Legation at Berne has communicated the following to the Swiss Political Department (Foreign Office):

> The American treaty of friendship and commerce of the eleventh of July, 1799, provides by Article 23 for the treatment of the subjects or citizens of the two States and their property in the event of war between the two States. This article, which is without question in full force as regards the relations between the Ger-

[1] Official Prints of the Department of State.

man Empire and the United States, requires certain explanations and additions on account of the development of international law. The German Government therefore proposes that a special arrangement be now signed, of which the English text is as follows:

Agreement between Germany and the United States of America concerning the treatment of each others citizens and their private property after the severance of diplomatic relations.

Article 1). After the severance of diplomatic relations between Germany and the United States of America and in the event of the outbreak of war between the two Powers, the citizens of either party and their private property in the territory of the other party shall be treated according to Article 23 of the treaty of amity and commerce between Prussia and the United States, of the 11th of July, 1799, with the following explanatory and supplementary clauses:

Article 2). German merchants in the United States and American merchants in Germany shall, so far as the treatment of their persons and their property is concerned, be held in every respect on a par with the other persons mentioned in Article 23. They shall accordingly, even after the period provided for in Article 23 has elapsed, be entitled to remain and continue their profession in the country of their residence. Merchants as well as the other persons mentioned in Article 23 may be excluded from fortified places or other places of military importance.

Article 3). Germans in the United States and Americans in Germany shall be free to leave the country of their residence within the time and by the routes that shall be assured to them by the proper authorities. The persons departing shall be entitled to take along their personal property, including money, valuables, and bank accounts, excepting such property the exportation of which is prohibited according to general provisions.

Article 4). The protection of Germans in the United States and of Americans in Germany and of their property shall be guaranteed in accordance with the laws existing in the countries of either party. They shall be under no other restrictions concerning the enjoyment of their private rights and the judicial enforcement of their rights than neutral residents. They may accordingly not be transferred to concentration camps, nor shall their private property be subject to sequestration or liquidation or other compulsory alienation except in case that under the existing laws apply also to neutrals. As a general rule German property in the United States and American property in Germany shall not be subject to sequestration or liquidation, or other compulsory alienation under other conditions than neutral property.

Article 5). Patent rights or other protected rights held by Germans in the United States or Americans in Germany shall not be declared void, nor shall the exercise of such rights be impeded,

nor shall such rights be transferred to others without the consent of the person entitled thereto, provided that regulations made exclusively in the interest of the State shall apply.

Article 6). Contracts made between Germans and Americans, either before or after the severance of diplomatic relations, also obligations of all kinds between Germans and Americans, shall not be declared cancelled, void, or in suspension, except under provisions applicable to neutrals. Likewise the citizens of either party shall not be impeded in fulfilling their liabilities arising from such obligations, either by injunctions or by other provisions, unless these apply to neutrals.

Article 7). The provisions of the sixth Hague Convention, relative to the treatment of enemy merchant ships at the outbreak of hostilities, shall apply to the merchant vessels of either party and their cargo. The aforesaid ships may not be forced to leave port unless at the same time they be given a pass, recognized as binding by all the enemy sea powers, to a home port, or a port of an allied country, or to another port of the country in which the ship happens to be.

Article 8). The regulations of chapter 3 of the eleventh Hague Convention, relative to certain restrictions in the exercise of the right of capture in maritime war, shall apply to the captains, officers, and members of the crews of merchant ships specified in Article 7, and of such merchant ships as may be captured in the course of a possible war.

Article 9). This agreement shall apply also to the colonies and other foreign possessions of either party.

I am instructed and have the honor to bring the foregoing to your Excellency's knowledge and to add that the German Government would consider the arrangement as concluded and act accordingly as soon as the consent of the American Government shall have been communicated to it through the Swiss Government.

Be pleased, etc.,

P. RITTER.

The Secretary of State to the Minister of Switzerland in Charge of German Interests in America

No. 416.] DEPARTMENT OF STATE,
Washington, March 20, 1917.

SIR: I beg to acknowledge the receipt of your note of February 10th presenting the proposals of the German Government for an interpretative and supplementary agreement as to Article 23 of the treaty of

1799. After due consideration, I have to inform you that the Government of the United States is not disposed to look with favor upon the proposed agreement to alter or supplement the meaning of Article 23 of this treaty. This position of the Government of the United States, which might under other conditions be different, is due to the repeated violations by Germany of the treaty of 1828 and the Articles of the treaties of 1785 and 1799 revived by the treaty of 1828. It is not necessary to narrate in detail these violations, for the attention of the German Government has been called to the circumstances of each instance of violation, but I may here refer to certain of them briefly and in general terms.

Since the sinking of the American steamer *William P. Frye* for the carriage of contraband, there have been perpetrated by the German naval forces similar unwarranted attacks upon and destruction of numerous American vessels for the reason, as alleged, that they were engaged in transportation of articles of contraband, notwithstanding, and in disregard of, Article 13 of the treaty of 1799, that "No such articles (of contraband) carried in the vessels or by the subjects or citizens of either party to the enemies of the other shall be deemed contraband so as to induce confiscation or condemnation and a loss of property to individuals," and that "In the case . . . of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port or further detained, but shall be allowed to proceed on her voyage."

In addition to the sinking of American vessels, foreign merchant vessels carrying American citizens and American property have been sunk by German submarines without warning and without any adequate security for the safety of the persons on board or compensation for the destruction of the property by such action, notwithstanding the solemn engagement of Article 15 of the treaty of 1799 that "All persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever the people, vessels or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned," and notwithstanding the further stipulation of Article 12 of the treaty of 1785 that "The free intercourse and commerce of the

subjects or citizens of the party remaining neutral with the belligerent Powers shall not be interrupted." Disregarding these obligations, the German Government has proclaimed certain zones of the high seas in which it declared without reservation that all ships, including those of neutrals, will be sunk, and in those zones German submarines have, in fact, in accordance with this declaration, ruthlessly sunk merchant vessels and jeopardized or destroyed the lives of American citizens on board.

Moreover, since the severance of relations between the United States and Germany, certain American citizens in Germany have been prevented from removing freely from the country. While this is not a violation of the terms of the treaties mentioned, it is a disregard of the reciprocal liberty of intercourse between the two countries in time of peace, and can not be taken otherwise than as an indication of a purpose on the part of the German Government to disregard in the event of war the similar liberty of action provided for in Article 23 of the treaty of 1799—the very article which it is now proposed to interpret and supplement almost wholly in the interest of the large number of German subjects residing in the United States and enjoying in their persons or property the protection of the United States Government. This article provides in effect that merchants of either country residing in the other shall be allowed a stated time in which to remain to settle their affairs and to "depart freely, carrying off all of their effects without molestation or hindrance," and women and children, artisans and certain others, may continue their respective employments and shall not be molested in their persons or property. It is now proposed by the Imperial German Government to enlarge the scope of this article so as to grant to German subjects and German property remaining in the United States in time of war the same treatment in many respects as that enjoyed by neutral subjects and neutral property in the United States.

In view of the clear violations by the German authorities of the plain terms of the treaties in question, solemnly concluded on the mutual understanding that the obligations thereunder would be faithfully kept, in view further of the disregard of the canons of international courtesy and the comity of nations in the treatment of innocent American citizens in Germany, the Government of the United States can not perceive any advantage which would flow from further engagements, even though they were merely declaratory of international law, entered into

with the Imperial German Government in regard to the meaning of any of the articles of these treaties, or as supplementary to them. In these circumstances, therefore, the Government of the United States declines to enter into the special protocol proposed by the Imperial Government.

I feel constrained in view of the circumstances to add that this Government is seriously considering whether or not the treaty of 1828 and the revived articles of the treaties of 1785 and 1799 have not been in effect abrogated by the German Government's flagrant violations of their provisions, for it would be manifestly unjust and inequitable to require one party to an agreement to observe its stipulations and to permit the other party to disregard them. It would appear that the mutuality of the undertaking has been destroyed by the conduct of the German authorities.

Accept, etc.,

ROBERT LANSING.